



Direct selling: Kerala

A global industry, empowering millions

[KPMG.com/in](https://www.kpmg.com/in) | [ficci.com](https://www.ficci.com)



[Contents]



| | |
|---|----|
| Foreword | 01 |
| Executive summary | 03 |
| Global direct selling market | 09 |
| Direct selling market in India | 19 |
| Direct selling in Kerala | 25 |
| Direct selling opportunities in Kerala: 2025 | 33 |
| Overview of current regulations in Kerala | 39 |
| Challenges faced by the industry | 45 |
| The regulatory challenge, and the way forward | 49 |
| Myths surrounding the industry | 57 |
| Annexures | 61 |

[Foreword]

FICCI

With economic development and growing consumerism, various store and non-store retail formats have evolved to cater to the growing retail sector in India. The Indian direct selling market at INR75 billion (2013-14) is one of the fastest growing non-store retail formats, recording double digit growth of more than 16 per cent over the past four years. The growing Indian market has attracted a large number of Indian and foreign direct selling companies.

While direct selling is a relatively new industry, it has provided self-employment opportunities to more than 80,000 people in Kerala, out of which nearly 58 per cent are women. Besides providing additional income opportunities to direct sellers, the industry also generates significant direct employment. A majority of the direct selling companies outsource the production, packaging and distribution of their products, thus generating indirect employment across the value chain while enabling the development of the Small & Medium Enterprises (SME) sector. The industry also contributes to the exchequer and generates taxes, and has the potential solution to several socio-economic challenges being faced by the country. Many direct selling companies have been actively contributing to social activities.

However, there has been a lack of clarity on the legislations governing this industry. We strongly believe that regulations should help clearly differentiate between fraudulent companies and legitimate businesses.

We, at the direct selling sub-committee, give insights into the issues pertaining to this labour intensive industry. The sub-committee within itself has an advisory board comprising neutral and intellectual people.

FICCI is confident that this report will provide insights and actionable recommendations for creating a conducive legal environment for the industry.



Dr. A. Didar Singh
Secretary General, FICCI

KPMG in India

Direct selling is one of the oldest, most-traditional forms of selling globally, involving direct interaction between the seller and the buyer. Today, it is a successful industry operating in over 100 countries globally with a market size of USD183 billion¹.

The direct selling industry in India is estimated at INR75 billion (2013-14), and forms only around 0.4 per cent of the total retail sales. This is far lower than the industry's market share in other comparable economies (one-half of China and one-tenth of Malaysia)¹. With the growth in consumer markets and an increase in its penetration to globally comparable levels, the direct selling industry has the potential to reach a size of INR645 billion by 2025 in India.

With a high rate of economic development, the direct selling market is growing in Kerala, especially in urban areas like Thiruvananthapuram, Cochin and Kozhikode.

The direct selling industry has contributed significantly to women empowerment, skill development, technology percolation and growth of the SME sector, besides contributing to the exchequer. In addition, the industry also provides a viable means of alternative income, which promotes self-employment. Over 80,000 people are already associated with the industry as direct sellers in Kerala¹.

With the functioning of the industry relying in individuals to accomplish sales, a number of fraudulent businesses have also tried to emulate the form. The industry recognises this as one of the biggest challenges to its growth. There is a need to revisit existing laws and bring about regulatory clarity to build an environment of trust in order to reap the multiple benefits the industry has to offer.

The need of the hour is to sensitise the consumers and the stakeholders, as well as constantly lobby for appropriate legislation that would represent the interests of the industry.



Rajat Wahi
Partner and Head,
Consumer Markets, KPMG in India

1. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

[Executive summary]



What is direct selling

Direct selling refers to the selling of goods and services to the consumers away from a fixed retail outlet, generally in their homes, workplace, etc., through explanation and demonstration of the product by direct sellers. It is one of the oldest modes of sales, and is similar to the traditional consumer goods retail model.

Evolution of the direct selling market in India

Modern direct selling can be considered to have been started in India with the establishment of Eureka Forbes in 1982¹. The industry witnessed significant growth post-liberalisation with many global players entering the Indian market. Amway was one of the first major global direct selling companies to enter India in the year 1995, which was followed by companies like Avon, Oriflame and Tupperware in 1996. Around the same time, Modicare was one the first few Indian companies to adopt this channel of distribution¹.



1. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Direct selling in Kerala

In 2014, the direct selling market in Kerala was estimated to be in the range of INR700-750 million². Our interaction with industry stakeholders suggests that the industry has created a positive impact on several social and economic parameters.

a. Additional income opportunities:

Direct selling provides additional income opportunities to a large number of people and promotes micro-entrepreneurship. In FY14, nearly 80,000-90,000 direct sellers are estimated to have engaged with the industry in Kerala, and this number is projected to increase further with the growth of the industry². In addition to providing income opportunities, direct selling also imparts transferable skills in sales and management, which can be used outside the direct selling industry as well.

b. Women empowerment: Direct selling offers self-employment opportunities to a large number of people, especially women. The industry provides women the flexibility to manage their time and balance their work and personal lives. In FY14, it provided self-employment to nearly 45,000-50,000 female direct sellers (58 per cent of the total direct seller workforce in the state)². Several companies work towards women empowerment. For example, Hindustan Unilever (HUL)

created project Shakti in 2001 to not only grow rural sales of its health and beauty care products but also provide income-generation avenues to rural women (called 'Shakti Ammas') in the process².

c. Development of the SME sector:

Many direct selling companies rely on Small and Medium Enterprises (SMEs) for manufacturing their products. They also rely on ancillary support services such as packing, labelling, logistics and material supply. In many cases, the direct selling companies impart the manufacturing know-how, technology and processes to enable the SMEs to produce quality products. The direct selling companies also invest in providing the right equipment and machines to the SMEs for production. Driven by these initiatives, many SMEs have now developed capabilities to cater to the needs of other Multi National Companies (MNCs) and have commenced supplies to them, promoting India as a manufacturing destination.

d. Employment generation: Besides providing additional income opportunities to direct sellers, the industry besides generates significant direct employment opportunities. A majority of the direct selling companies outsource the production, packaging and

distribution of their products, thus generating employment across the value chain.

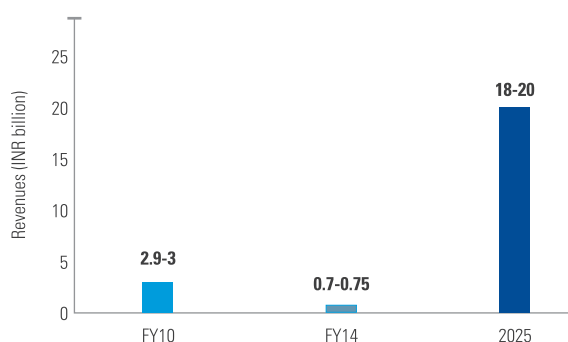
e. Social initiatives: In terms of responsibilities towards society, direct selling companies have several contributions to their credit in Kerala. The AMC India's nutrition talks and Amway Opportunity Foundation's national project for the blind are well known for their social impact³.

f. Contribution to the government

exchequer: The operating model for direct selling generates tax contributions to the government across its value chain. Total indirect tax contribution by direct selling industry to the government in FY14 alone is estimated to be in the range of INR70-80 million².

Going forward, the industry has the potential to create a significant social and economic impact in Kerala. Our estimates suggest that the industry has the potential to reach a size of around INR18-20 billion by 2025, driven by growth in consumer markets and increase in the penetration of direct selling. This is, however, contingent on creating an enabling environment for the industry and mitigating some of the challenges it faces today.

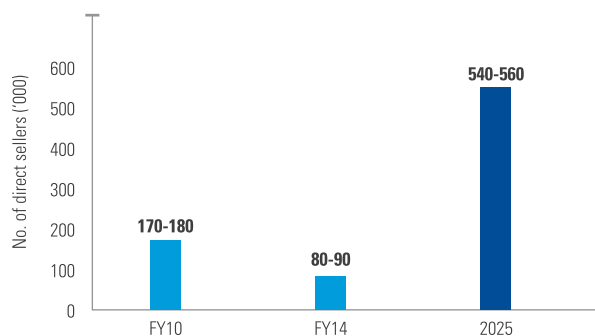
Market potential of INR18-20 billion by 2025



2. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15
3. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

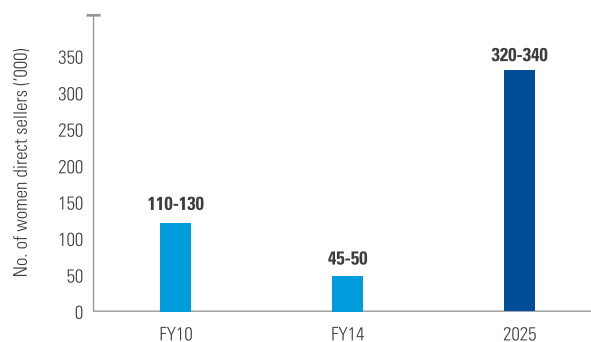
Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Self-employment opportunities to 540,000-560,000 people by 2025



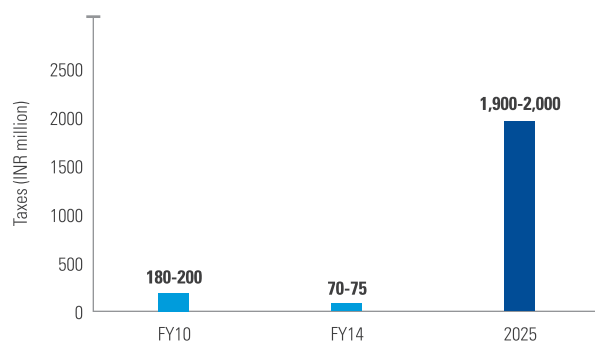
Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Potential to economically empower 320,000-340,000 women



Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Ability to contribute INR1,900-2,000 million to the exchequer



Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Note: Impact of GST has not been considered for the opportunity assessment of the industry and its contribution to the exchequer.

Challenges: Direct selling in Kerala

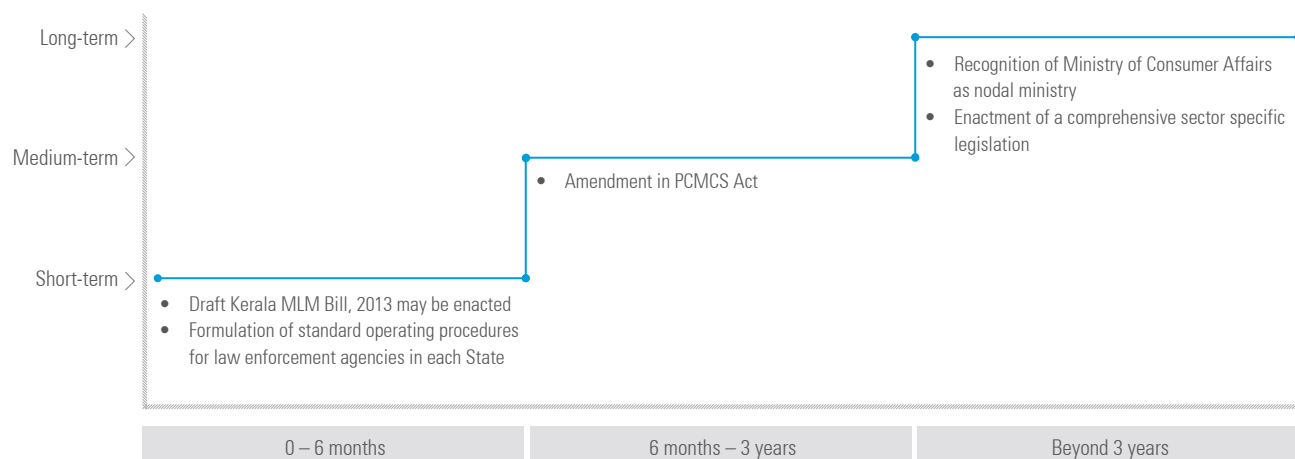
Similar to the traditional consumer industries, the direct selling industry faces challenges in terms of setting up manufacturing facilities, dealing with import duties, etc. However, one of the most daunting concerns for the direct selling industry is lack of regulatory clarity. Due to this, direct selling companies are often mistaken for fraudulent Pyramid/Ponzi schemes.

To provide a conducive and sustainable operating environment in India for the companies operating in this industry, a series of reforms are required ranging from immediate short-term reforms in the nature of certain amendments in the existing Acts/policies to long-term measures of enacting a specific governing legislation for the sector.

A separate policy framework for the direct selling industry could clear the blurred lines between ethical industry players and impersonators, and go a long way to help regain consumer confidence.

We recommend the following road-map which can be considered by the government/regulators to help benefit this industry in the future.

Road map to help benefit the direct selling industry



Source: FICCI Direct Selling taskforce, Industry discussions and KPMG in India analysis 2014-15

1

Amendment in the PCMCS Act

Since the PCMCS Act does not explicitly address schemes which involve genuine sale of products or services, some jurisdictions have attempted to read into these clauses of the Act. An amendment in the PCMCS Act is therefore needed to make the distinction clear between direct selling, including MLM plans involving the genuine sale of products and fraudulent pyramid, money circulation schemes.

2

Formulation of standard operating procedures

In order to do away with the prevailing operational uncertainty, an immediate action needs to be taken at the state level. The need of the hour is the development of standard operating procedure for law enforcement authorities to be followed in cases where a complaint is filed against fraudulent MLM schemes. This ground level initiative shall help avoid undue harassment of genuine players of the industry and restore public confidence.

3

Formulation of state-specific legislation

The Kerala State government should enact the draft Kerala State Multi-Level Marketing (Control and Regulation) Bill, 2013.

4

Need for a governing ministry and legislation

At present, direct selling falls under the purview of state legislation and is governed by multiple ministries/departments at the centre, state and local levels and this has resulted in multiple regulations governing this sector. This should be streamlined and a single ministry should be nominated at the centre, which will develop regulatory framework for the Industry.

Source: KPMG Analysis, Press Trust of India, 18 March 2011 issue, Industry Discussions, FICCI Direct Selling Task Force

[Global direct selling market]



Direct selling is essentially marketing of products and services directly to consumers in a person-to-person manner, away from permanent retail locations.¹

Direct selling is a dynamic and rapidly-expanding channel of distribution for marketing of products and services. While there is no universal definition of direct selling, different countries, associations and individuals define the sector differently. It can be broadly understood as 'selling of goods and services to consumers away from a fixed retail outlet, generally in their homes, workplace, etc., through explanation and demonstration of the product by the direct sellers.'¹ Direct sales generally benefit from the explanation and demonstration of products made by an independent direct sales person to the consumer. Being a specialised channel of distribution, which is neither wholesale nor retail, it covers both business-to-business and business-to-consumers aspects.

Despite its differences, in many ways, direct selling is similar to traditional consumer goods retail. In both cases:

- the distributors/direct sellers can earn a commission, when the sale of the product takes place.
- earning of sales commission may be based on one's own sales as well as on the cumulative sales of the group built by the seller, similar to commissions in the traditional sales environment.



1. Discussions with National Law School, Industry discussions, WFDSA annual report 2015, WFDSA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015, FICCI Direct Selling taskforce, KPMG report- Direct selling: A global industry empowering millions in India, 2014

Direct selling is different from chit funds and Ponzi schemes

Various forms of networking schemes

Globally, the direct selling industry has undergone substantial changes since the 1970s. Around that time, there was a proliferation of multiple new direct selling companies and one-to-one marketing became a common marketing technique. Unfortunately, the rise in legitimate MLM compensation plans was accompanied by a surge in pyramid schemes that played off the popularity of MLM plans or network sales and paid more attention to recruiting people than selling of actual goods.

What is striking about these schemes is that while they are old forms of fraud, modern technology has vastly multiplied their potential to harm citizens across the globe. The internet in particular offers pyramid builders a multi-lane highway to worldwide recruits in virtually no time. Further, globalisation coupled with the newly emerging market economies has provided a new outlet for pyramiding.

In this section, we have outlined the primary definitions of various forms of prevalent unfair trade practices and laid down certain parameters to distinguish between 'fly by night operators' and 'legitimate businesses'.



Pyramid selling, chit fund or Ponzi schemes



Pyramid schemes

Pyramid schemes are prevalent in multiple forms, promise consumers/investors large profits based primarily on recruiting others to join their programme, not based on profits from any real investment or real sale of goods. Two major signs that a product is being used to disguise pyramid schemes are:

- Large payments required to join; and
- Compensation paid for recruiting without regard to end sales ('headhunting fees').



Ponzi schemes

Popularly known as 'Peter-to-Paul' schemes, a Ponzi scheme is centred around continuous recruiting and the promoter generally has no product to sell and pays no commission to investors who recruit new 'members'. Instead, the promoter collects payments from a stream of people, promising all the same high rate of return on a short-term investment with no real investment opportunity.



Chit fund schemes

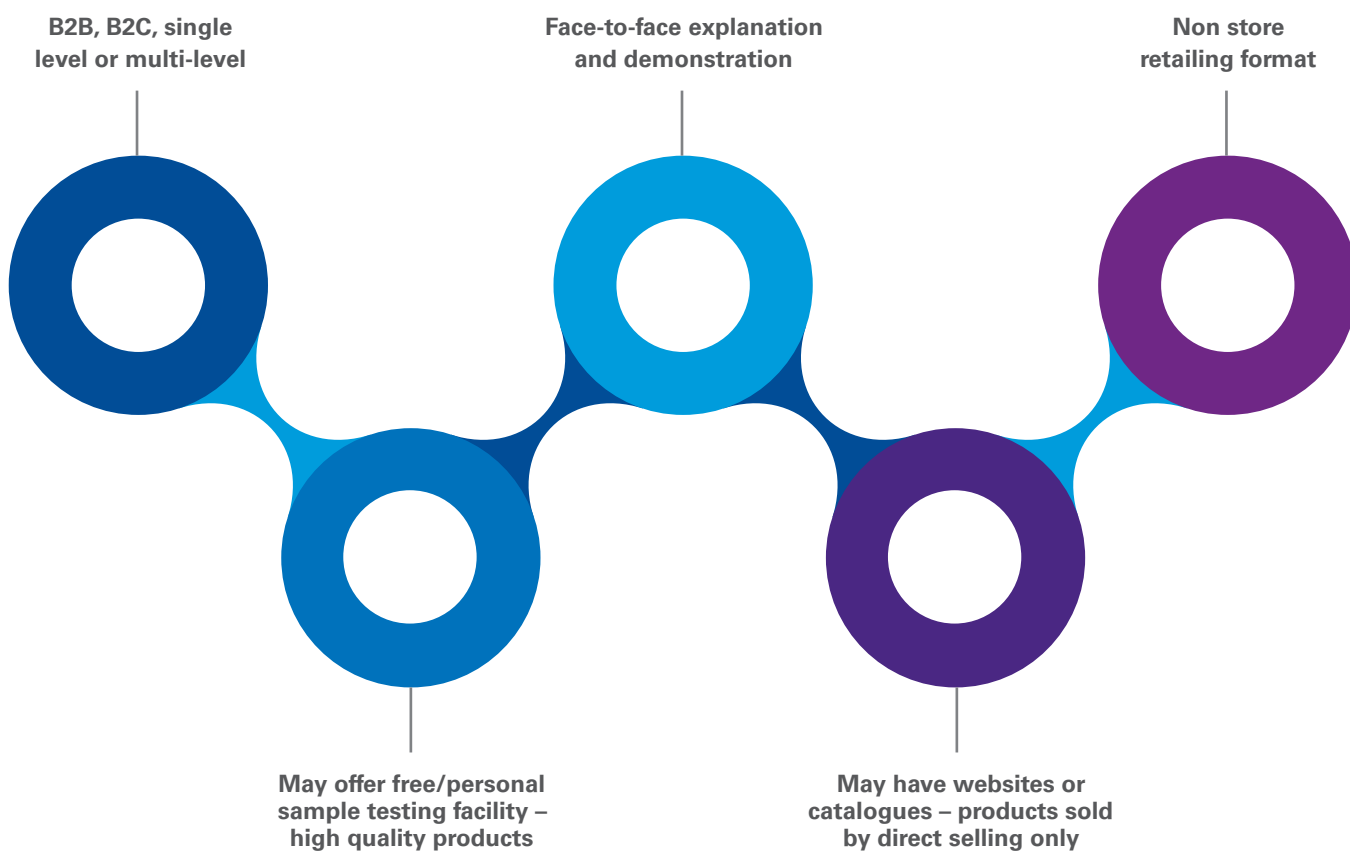
With no underlying product and based on more or less similar lines like a Ponzi scheme, a chit fund is a kind of savings scheme. Under this scheme, a person enters into an agreement with a specified group of persons, everyone of them commits to contributing a certain sum of money by way of periodical instalments over a definite period. Each subscriber shall, in his/her turn, as determined by lot or by auction or by tender or in such a manner as may be specified in a chit agreement, be entitled to the prize amount.

Though often misused by promoters, chit fund schemes are not always fraudulent and may be conducted by organised financial institutions within the letter of the law.

Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

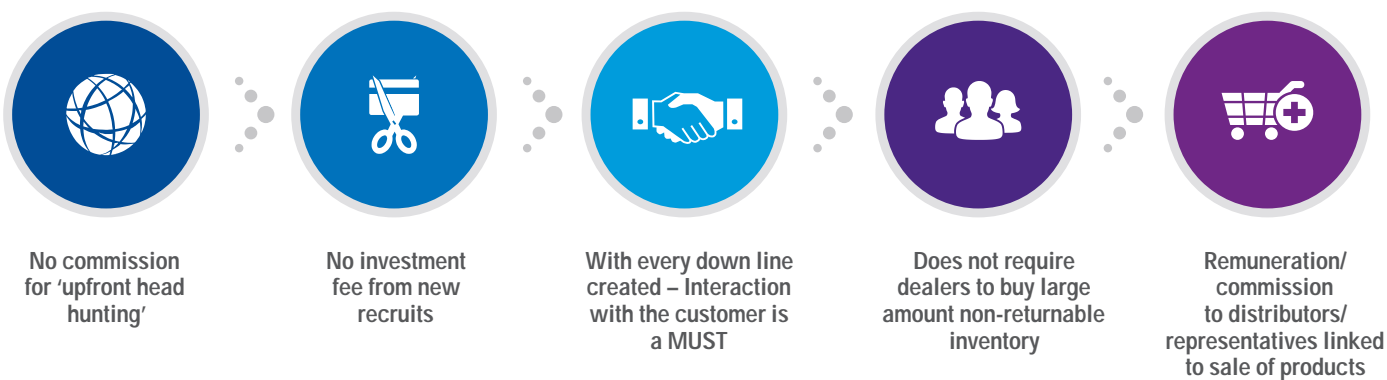


Though definitions vary, there are certain commonalities such as:



Source: FICCI Direct Selling taskforce, Industry discussions

Key factors differentiating genuine direct selling schemes from fraudulent ones



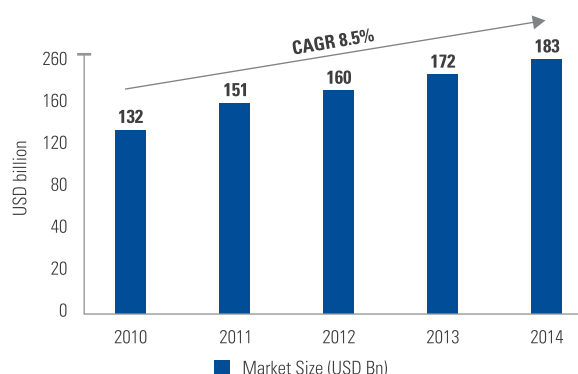
Source: FICCI Direct Selling taskforce, Industry discussions

Global direct selling market in 2014-15 was worth USD183 billion and employed around 100 million people worldwide

Global direct selling market

Market size

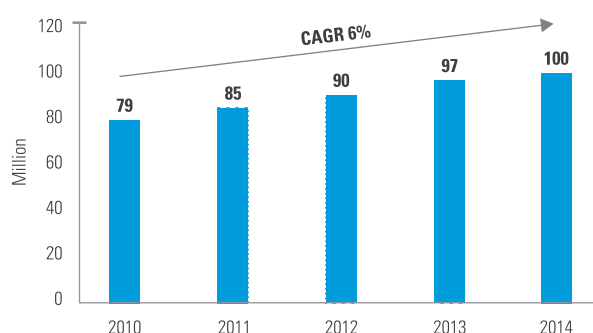
The global direct selling industry is a USD183 billion industry. The industry has witnessed an overall growth of 8.5 per cent over the past five years. The industry saw a robust growth of 19 per cent in 2011 over 2010, post which the industry grew at a lower rate of 5 per cent in subsequent years due to the global economic slowdown. However, the long-term growth prospects of the industry remain robust.



Source: WFDSA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015

Number of direct sellers

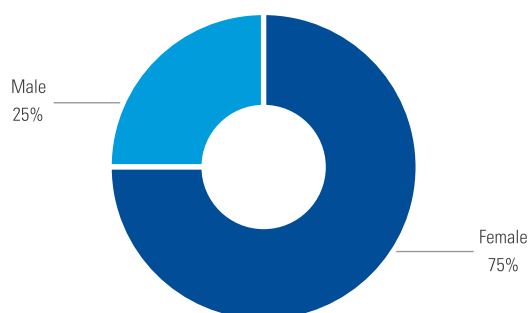
The direct selling industry benefits from in-person contact for the demonstration and sale of products and therefore provides entrepreneurship opportunities to a large number of people. The opportunities in the industry has grown by a CAGR of 6 per cent in the last five years and the number of direct sellers have increased to 100 million direct sellers in 2014 from 79 million direct sellers in 2010.



Source: WFDSA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015

Gender-wise participation in the industry

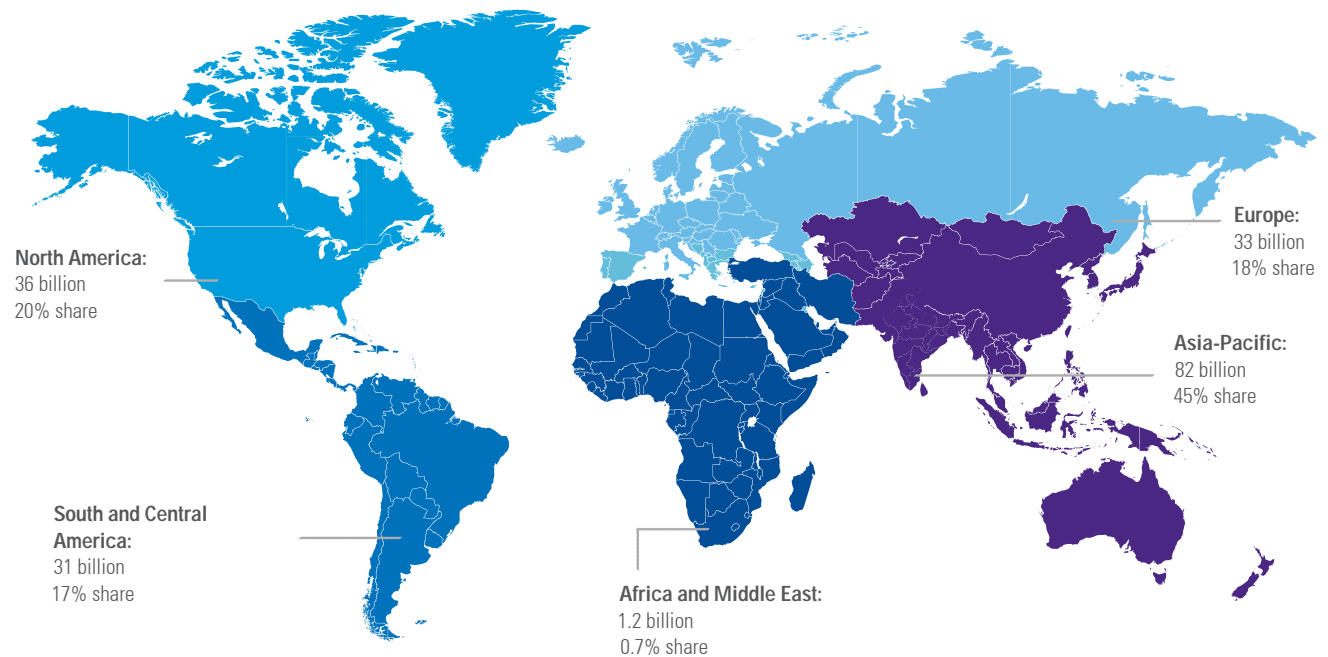
As of 2014, 75 per cent of the industry comprised of females. Direct selling has given women, who find it difficult to work away from home, an alternative earning opportunity in their homes, enabling them to maintain a work-life balance.



Source: WFDSA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015

Asia-Pacific is the largest direct selling region in the world, followed by North America and Europe

Major regions, 2014



Asia-Pacific

- Asia-Pacific is the largest market for direct selling with a 45 per cent share in the global direct selling market. Asia-Pacific has also been the fastest growing region in the world, growing at a CAGR of 8.4 per cent to reach USD82 billion in 2014 from USD64 billion in 2011.
- The direct selling industry in the region engages ~51 million people as direct sellers in 2014.
- Japan, China, Korea, Malaysia, Taiwan, Thailand, Australia, Philippines, Indonesia and India have billion dollar markets in this region.



Americas

- The Americas account for 37 per cent share in the global market and engages ~33 million people as direct sellers.
- The U.S. and Canada are billion dollar markets in North America engaging 19 million people as direct sellers.
- South and Central America has been growing at a CAGR of 7.8 per cent between 2011 and 2014. Brazil is the largest market in South and Central America accounting for a 42 per cent share followed by Mexico, Colombia, Peru and Argentina which are also billion dollar markets.



Europe, Middle East, Africa

- Europe accounts for an 18 per cent share in the global direct selling market and has grown at a CAGR of 3.4 per cent from 2011 to 2014. It engages ~14 million people as direct sellers.
- Western Europe accounts for nearly 75 per cent of the total market in Europe. France, Germany, Italy and the U.K. in Western Europe and Russia are billion dollar markets.
- The Middle East and Africa is a small market for direct selling, accounting less than 1 per cent share of the global market.

Source: WFDFA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015, KPMG in India analysis 2014-15

Person-to-person selling is the dominant form of selling witnessed in the direct selling market

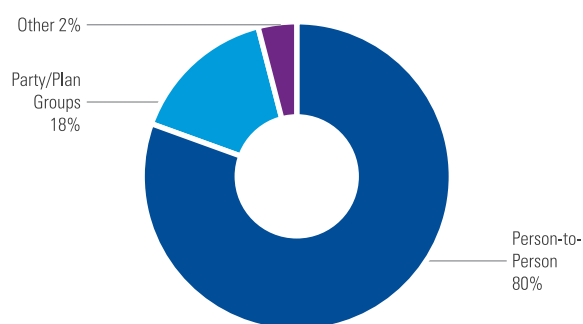
Methods used for selling

While some direct sellers may be employees of a direct sales company, authorised to act for the company in business matters, most direct sellers are independent business operators or self-employed – they enjoy the advantage of deciding when and how much time will be devoted to selling products.

Traditional direct selling methods include:

- Person-to-person marketing
- Party Plan Groups

Person-to-person is the most popular amongst direct selling companies followed by Party Plan Groups.



Source: WFDSA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015



Person-to-person (P2P)

A majority of the direct sales around the globe takes place through person-to-person contact. This method is most widely used by direct selling companies.

Person-to-person direct selling can be defined as a one-on-one interaction between the sales person and the customer in which a product is promoted for sale by the former to the latter. This method of direct selling can use both single-level and multi-level marketing.



Party Plan Groups

The party plan is a method of direct selling in which social events are organised where products and services are promoted and offered for sale.

Direct selling through party plan mostly uses multi-level marketing. Sales people approach other people to host events during which the products are demonstrated. In return, the host is given a part of the revenue from the goods sold. The sales person is paid a commission on the sales or on the sales made by the sales people recruited by him/her.

Amway, Avon and Herbalife are the top three direct selling companies accounting for 20 per cent of the global direct selling market

Top 20 direct selling players in the world

| Rank | Company name | Country | Year founded | Revenue 2013 (USD billion) | Markets | Distributors (million) | Employees ('000s) | Sales method | Compensation structure |
|------|-----------------------------|------------|--------------|----------------------------|---------|------------------------|-------------------|----------------------------|------------------------|
| 1 | Alticor (Amway) | U.S. | 1959 | 11.80 | 100 | 3 | 21 | P2P | MLM |
| 2 | Avon Products Inc. | U.S. | 1886 | 9.95 | 100 | 6 | 36 | P2P | MLM |
| 3 | Herbalife Ltd | U.S. | 1980 | 4.80 | 91 | 3 | 7.5 | P2P | MLM |
| 4 | Vorwerk & Co. KG | Germany | 1883 | 3.70 | 76 | 0.6 | 12 | P2P and Party Plan | MLM |
| 5 | Mary Kay Inc. | U.S. | 1963 | 3.60 | 35 | 3 | 5 | P2P and Party Plan | SLM |
| 6 | Natura Cosmetics SA | Brazil | 1969 | 3.20 | 7 | 1.6 | 7 | P2P | MLM |
| 7 | Nu Skin Enterprises Inc. | U.S. | 1984 | 3.18 | 53 | 1.3 | 1.2 | P2P | MLM |
| 8 | Tupperware Brands Corp | U.S. | 1946 | 2.67 | 100 | 2.6 | 13.5 | P2P and Party Plan | SLM and MLM |
| 9 | Belcorp Ltd. | Peru | 1968 | 1.96 | 16 | 0.9 | 9 | P2P and Party Plan | SLM and MLM |
| 10 | Oriflame Cosmetics SA | Luxembourg | 1967 | 1.95 | 66 | 3.5 | 7 | P2P | MLM |
| 11 | Primerica Inc. | U.S. | 1977 | 1.27 | 2 | 0.1 | 2 | P2P | MLM |
| 12 | Ambit Energy | U.S. | 2006 | 1.20 | 1 | 0.25 | 0.6 | P2P | MLM |
| 13 | Telcom Plus | U.K. | 1996 | 1.10 | 1 | 0.05 | 0.7 | P2P | MLM |
| 14 | Stream Energy (Ignite Inc.) | U.S. | 2004 | 0.87 | 1 | 0.26 | 0.2 | P2P | MLM |
| 15 | Yanbal International | Peru | 1967 | 0.85 | 10 | 0.4 | 6 | P2P | MLM |
| 16 | Miki Corp. | Japan | 1966 | 0.78 | 3 | NA | 0.3 | NA | NA |
| 17 | Thirty-One Gifts | U.S. | 2003 | 0.76 | 2 | 0.12 | 1.7 | Party Plan and Group Sales | MLM |
| 18 | Blyth Direct Sales Group | U.S. | 1973 | 0.75 | 21 | 0.1 | 1.2 | Party Plan and Group Sales | MLM |
| 19 | USANA Health Sciences | U.S. | 1992 | 0.72 | 19 | 0.27 | 1.4 | P2P | MLM |
| 20 | CAN Inc. | U.S. | 1993 | 0.70 | 23 | 0.2 | 1.5 | P2P | MLM |

Source: Direct Selling News Website, 12 August 2015, KPMG in India Analysis, 2015.

[Direct selling market in India]



The direct selling market in India took off in 1990s with the influx of the large global direct selling companies looking to tap the Indian opportunity

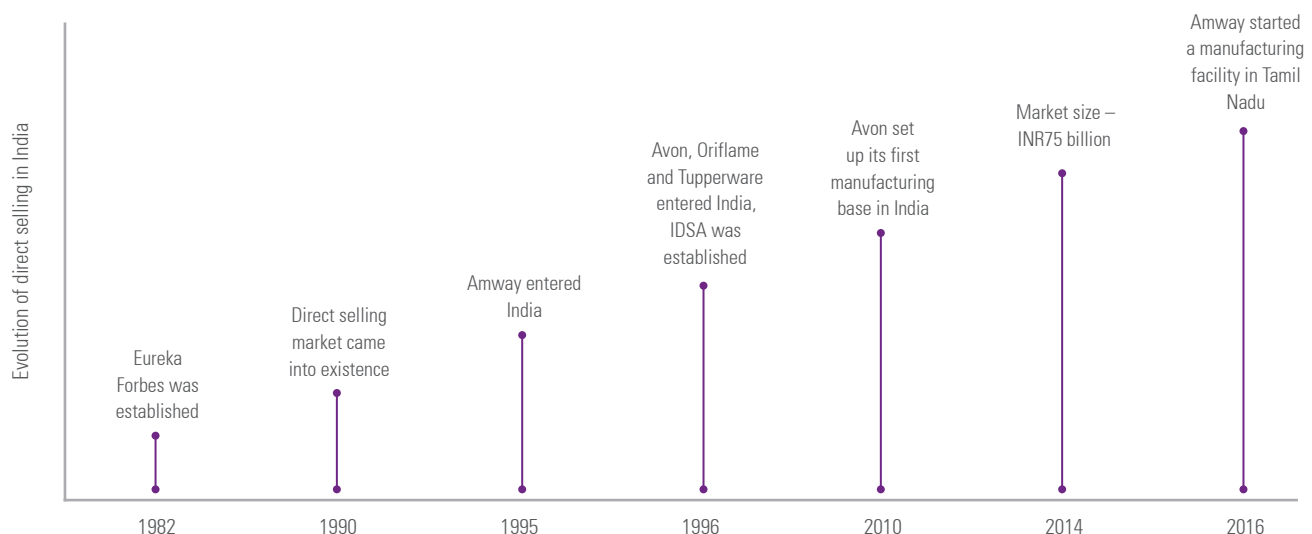
Direct selling market in India

In India, the direct selling industry commenced in 1982 when Eureka Forbes was established as a result of a joint venture between Shapoorji Pallonji Group's Forbes & Company Ltd. of Mumbai and Electrolux of Sweden.¹ The industry came into existence in early 1990s soon after the country opened up to the global market.

The industry witnessed major growth post liberalisation with many global players entering the Indian market. Amway was one of the first major global direct selling companies to enter India in the year 1995, which was followed by companies such as Avon, Oriflame and Tupperware in 1996. Around the same time, Modicare was one the first few Indian companies to adopt this channel of distribution.¹



1. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

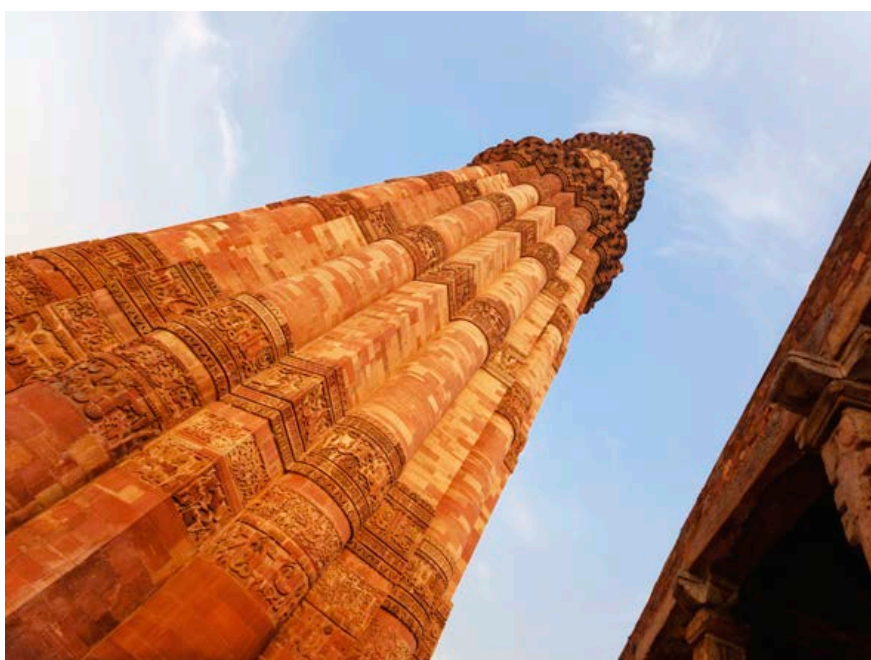
Even though a huge chunk of Indian direct selling companies initially started in South India, today many of them have pan India operations. In terms of revenue generated in Maharashtra, Tamil Nadu, Kerala and Andhra Pradesh have the highest shares.³ Recently, the industry witnessed greater growth in the Eastern part of the country and in many tier II and III cities with direct selling companies trying to reach out to customers in markets which have remained untapped thus far.

The direct selling industry in India is a INR75 billion market today and is dominated by the organised players contributing ~95 per cent to the market.² The market has grown to become a key channel for distribution of goods and services in the country, specially for health and wellness products, cosmetics, consumer durables, water purifiers and vacuum cleaners. However, it is still undeveloped as compared to global peers and the variety of brands and products available in the country are lower than those in other economies.

Going forward, the growth of the industry is likely to be majorly driven by expanding markets and a strong consumer base increasingly looking for quality products that add value, and are willing to pay a premium.

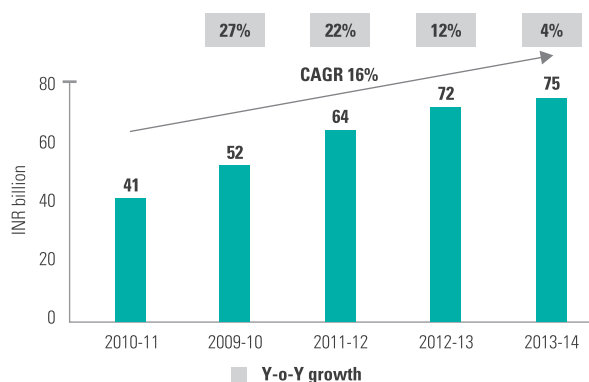
However, currently the industry is facing many challenges in India. As India lacks a systematic policy that clearly defines the regulatory framework of the industry. There is no clear definition for legitimate direct selling to differentiate it from Ponzi/ Pyramid Schemes attempting to disguise themselves as direct selling structures. As a result of the lack of clarity, the number of fraudulent activities in the industry has increased and legitimate direct selling is being confused with Ponzi/Pyramid Schemes.³

2. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15
3. Industry discussions, FICCI direct selling taskforce



The direct selling market in India has grown at a CAGR of 16 per cent over the last five years from INR41 billion in 2009-10 to INR75 billion in 2013-14

Direct selling market size in India



Source: IDSA Reports on Direct Selling 2009-2014, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, PHD Chamber, Direct Selling News, Industry Discussions, FICCI Direct Selling Task Force

The direct selling market in India has grown at a CAGR of 16 per cent over the past five years to reach INR75 billion in 2014. The market grew at a lower rate of 4 per cent in 2013-14 due to a slowdown in the industry. Lack of clarity on state regulatory issues and unclear laws pertaining to the industry have significantly impacted the working environment of major industry players.

The Indian direct selling industry is well poised to occupy an important position in the international and domestic markets. However, there are many issues and challenges which remain bottlenecks for the growth of Indian direct selling industry.

In states such as Andhra Pradesh, Telangana and Kerala, the direct selling business has been impacted due to a lack of regulatory clarity. There is a need for the central as well as the respective state governments to take the lead in coming out with a comprehensive policy for the industry, which could enable the industry to grow multifold over the next few years, and also create direct and indirect employment.

North India is the largest market for direct selling followed by the South

Region-wise direct selling market

North

North: 29% share; 12% growth

North India is the largest region by market size and accounted for INR22 billion in 2013-14. Lucknow, Ludhiana and Delhi generate the maximum sales in the region. Other key cities include Bhopal, Chandigarh and Allahabad.

North East

North East: 12% share; 14% growth

North East is currently the smallest market for direct selling. However, over the past few years, growth has picked up in the region with efforts from industry players. It has recorded the highest growth rate of 14 per cent in India with revenue of INR9 billion in 2014. Key cities in the region include Itanagar, Guwahati and Shillong.

West

West: 16% share; 11% growth

West India is a relatively smaller market compared to the Northern and Southern regions. Direct selling sales in this region are driven by Mumbai and Jaipur followed by other key cities such as Ahmedabad, Surat and Pune. Collectively, the region recorded revenues for INR12 billion in the year 2013-14.

East

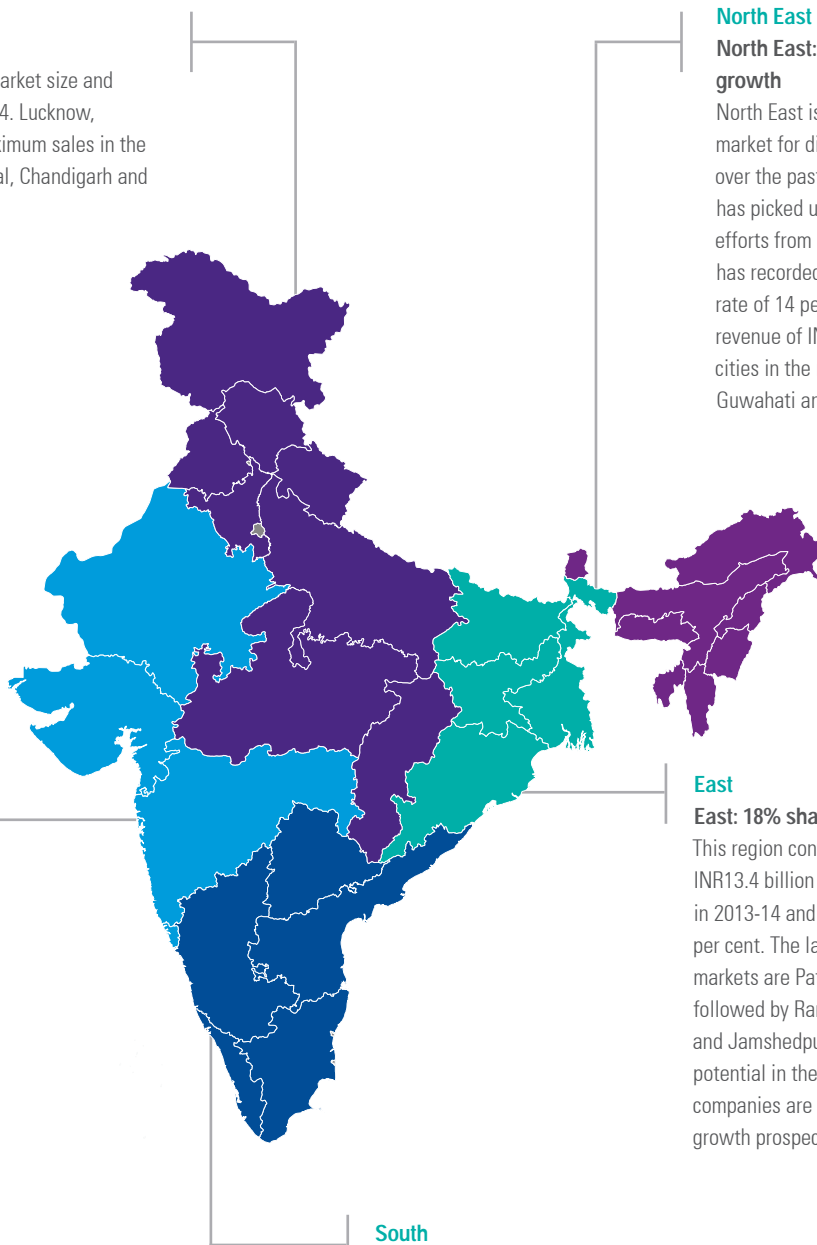
East: 18% share; 10% growth

This region contributed around INR13.4 billion to the gross revenue in 2013-14 and grew at around 10 per cent. The largest direct selling markets are Patna and Kolkata followed by Ranchi, Bhubaneswar and Jamshedpur. With unexploited potential in the eastern region, companies are optimistic about growth prospects in the future.

South

South: 25% share; 13% decline

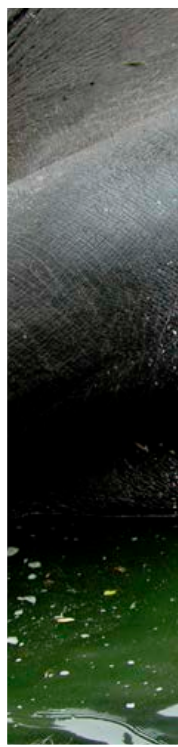
South holds the second highest share for the direct selling industry and accounts for INR19 billion in revenue in 2013-14. However, its share has fallen along with a negative growth rate in recent times given the unfavourable business environment (lack of regulatory clarity leading to litigation on direct selling companies). Bengaluru, Chennai and Hyderabad are the largest direct selling markets in the South.



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15



[Direct selling market in Kerala]



Direct selling market in Kerala was worth INR700-750 million in 2013-14



State overview

| Kerala direct selling market particulars | |
|--|----------------------|
| State | Kerala |
| Capital | Thiruvananthapuram |
| Population (2011 census) | 33.4 million |
| NSDP per capita (2013) | INR88,000 |
| Direct selling market (FY14) | ~ INR700-750 million |
| No. of direct sellers (FY14) | ~ 80,000-90,000 |
| Market Growth potential (2025) | INR18-20 billion |

Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15, 22 September 2015

South India has been a key market for direct selling companies in India with many of them starting their operations in this region. The region has witnessed reasonable growth in direct selling over the past few years and contributes around 25 per cent to the overall Indian direct selling market in 2014.¹

In Kerala, the direct selling industry has been in existence for several years. The industry witnessed a decade of rapid growth till 2010 driven by the high literacy rate, one of the highest per capita incomes in the country, high rates of urbanisation and a consumption-oriented population. As a result, the direct selling market in Kerala had reached its peak size of about INR2,900-3,000 million by FY10 and single handedly accounted

for about 7 per cent of India's total direct selling industry.

However, the industry has been in a state of constant decline over the past five years, mainly due to a lack of clarity on the policy for direct selling. The lack of regulatory clarity has led to the inability of law enforcement authorities to differentiate legitimate direct selling from illegal pyramid schemes. As a result, the direct selling industry size had fallen to about INR700-750 million in FY14 and contributed only around 1 per cent to the overall direct selling market in India.¹

However, there is a glimmer of hope with the state government drafting the Kerala State Multi-Level Marketing (Control and Regulation) Bill, 2013¹ which lays down detailed guidelines for regulating direct selling or multi-level marketing activities, particularly to help ensure that such business activities are conducted without violating the provisions of the PCMCS Act.

Given the positive intent of the state government, the direct selling industry has strong long-term potential for growth in Kerala and is expected to reach a size of INR18-20 billion by 2025. This growth is likely to be driven by the high rate of economic development in the state coupled with a high human development index, rising demand for consumer goods especially in urban markets like Thiruvananthapuram, Cochin, and Calicut, and the potential to increase the penetration of direct selling to globally comparable levels.¹



1. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

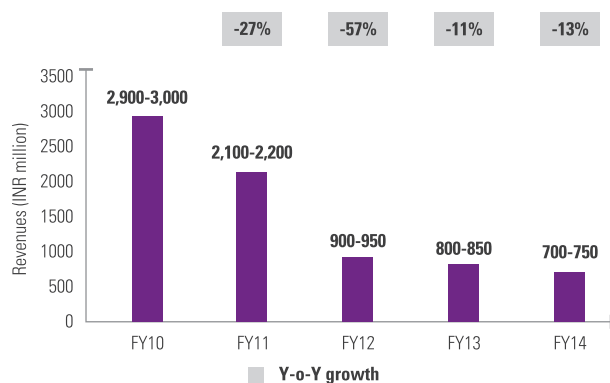
The direct selling industry has generated large number of self employment opportunities in Kerala

Key players

The major players operating in Kerala are Amway, Modicare, K-Link and DXN. The direct selling industry spans across a diverse range of products. However, specialised products requiring one-on-one interaction and

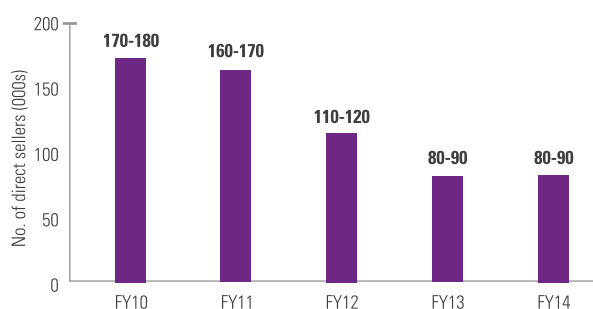
demonstration with the customers such as health and wellness products, cosmetics and personal care products dominate the direct selling market in Kerala.

Market size



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Self employment opportunities



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

The direct selling industry provided self employment opportunities to around 170,000-180,000 people in Kerala in FY10 which contributed significantly to the total workforce in Kerala. The Kerala government has also recognised the employment generation potential of the direct

selling industry in the state. However, the size of the direct selling community has declined in the recent past. In 2014, it provided employment opportunities to around 80,000-90,000 individuals. As per industry discussions with IDSA and direct selling firms, the drop can be mainly

attributed to regulatory concerns and actions taken against the direct selling firms. Consequently, a number of leading industry players such as Amway, Modicare, K-Link and DXN have either curtailed their direct selling operations or have completely stopped direct selling activities in Kerala.

Direct selling market in Kerala comprises of around 58 per cent women.

Industry employs a large number of women

The direct selling industry in Kerala has contributed significantly towards the social and economic empowerment of women by providing self-employment opportunities to around 45,000 - 50,000 women or around 58 per cent of the total direct sellers in FY14. Our research indicates that the women employed in direct selling not only become financially independent, but also gather sales and marketing skills which can be leveraged across multiple industries. These women gradually become more conscious and aware of their rights, making them capable of decision making. Moreover, the unique work schedule, flexibility of direct selling allows them to strike a balance between their work and personal lives.

Gender-wise break up of direct sellers (per cent)



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15



Direct selling companies have also contributed towards the development of direct sellers by building training infrastructure

Contributions to training and infrastructure development²

Modicare

Modicare has set up multiple training centers called 'Modicare Success Centers' in Kerala. These centers conduct regular training programmes to educate new joiners about the products and their usage. Regular training is also conducted for all employees to help them learn and improve upon their communication, leadership and selling skills. The company has appointed a special team of trainers who conduct trainings from time-to-time to make it convenient for all direct sellers to attend. In addition

to these trainings, Success Centers double up as touch points with the company and provide a venue for the customers to get introduced to the entire range of products the company has to offer.

Amway

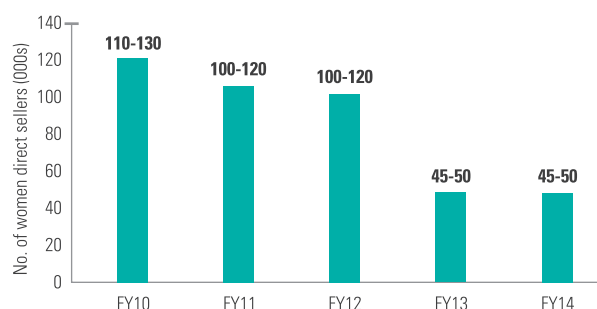
Amway has established 'Pick Up Centers' (PUCs) in Kerala and also has a local ordering center in Kozhikode. The PUC model developed by Amway not only provides infrastructure for storing the company's products but also the opportunity for customers to touch and feel them. These PUCs

serve as the main center of Amway's activities in the state. The direct sellers collect Amway products from the PUCs and also check their own performance. These centers provide in-depth information on new products thus developing the direct seller's understanding of new introductions. These PUCs also provide unlimited free access to training material on skill development which is crucial for any direct seller.



Potential benefits - Socio-economic impact of the industry

Opportunities for self employment and women empowerment



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15

As mentioned earlier, the industry offers self-employment opportunities to a large number of people, especially women. Direct selling gives women the flexibility to manage their time and balance their work and personal lives. The industry also offers financial independence to women and enables them to take better care of their families. The industry in FY14 employed nearly 45,000 - 50,000 women or about 58 per cent of the total direct sellers in Kerala. Direct selling companies have also championed social programmes aimed at benefiting local communities in the state. For instance, in 2008, Avon India in association with the Avon Foundation started Breast Cancer Crusade to promote education and awareness about breast health in the country, including Kerala. Avon's mission is to provide more women, particularly those who are medically under-served, with information about breast cancer, and with direct access to early detection services. The Avon Foundation, responsible for the company's charity activities, also awards grants globally to educate women about breast cancer, and recommends that they get clinical breast exams.³

Increase in product reach to tier II, III cities and rural areas

Direct selling companies are increasing their reach to tier II and III cities and rural areas of Kerala to increase both awareness about and adoption of their products. Some direct selling companies are also foregoing their premium tag and adopting value positioning in order to make their products affordable to

'Bottom of the Pyramid' customers.

This includes selling smaller pack sizes, affordable variants of flagship brands, as well as single serve sachets. For instance, Amway has introduced sachets of shampoos and conditioners to provide high quality hair care products to customers in the low income group.³



3. Industry discussions, FICCI direct selling taskforce

Geographical expansion to reach tier II, III cities and rural areas

Many companies including Modicare and Amway are expanding into tier II and III cities and rural areas. The strategy adopted by the direct selling companies in India to increase rural focus involves the companies to forgo their premium tags and target mass segments by producing product sachets. This marketing method has effectively enabled companies to build trust in smaller towns and villages.

Modicare

Modicare doubled its salesforce to 250,000 direct sellers in 2011 and invested INR500 million to develop products and open more centres across the country, for penetrating the tier II, III cities and rural markets. It launched a new range of products under the brand

names 'Smooth' and 'Velocity'. These brands included products like shaving lotion, after shave, body spray among others and were offered by the company at a lower price range compared to similar products sold by other companies.

Amway

With an aim to provide its clientele with products at a lower price bracket, Amway launched sachets of its Satinique shampoos and conditioners priced INR5. They also plan to launch two-in-one products such as shampoos and conditioners to further their reach in the market.

Source: Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

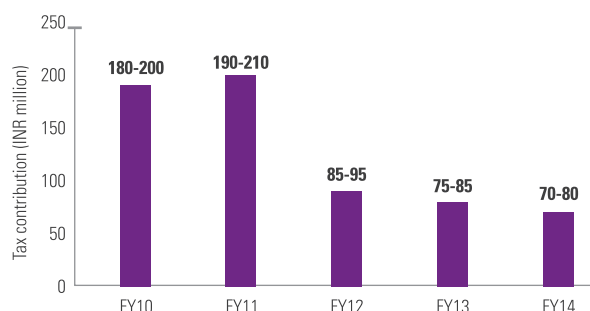
Sourcing from SMEs leading to growth and technology percolation

Several direct selling companies in India outsource their manufacturing process to contract manufacturers which are generally Micro, Small and Medium Enterprises (MSME) to produce products domestically.

As of 2011, two thirds of the products sold by direct selling companies were sourced through MSMEs⁴.

In many cases, direct selling companies impart the manufacturing know-how, technology and processes to enable the SMEs to produce quality products. Direct selling companies also invest in providing the right equipment and machines to the SMEs for production. Driven by these initiatives, many SMEs have now developed capabilities to cater to the needs of other MNCs and have commenced supplies to them, promoting India as a manufacturing destination.⁴

Contribution to the exchequer



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

The direct selling industry generates tax contributions to the government across its value chain. The industry contributed significantly to the exchequer during FY11. However, due to regulatory concerns and negative market sentiments, the industry's revenues declined in

recent past, leading to reduced tax contributions. The total tax contribution by direct selling industry to the Kerala government in FY14 is estimated to be in the range of INR70-80 million.⁴

4. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Contributions to social causes

The direct selling industry has made several notable contributions to social causes across the country. In FY13, approximately four out of every five direct selling companies in the organised sector were involved in CSR activities.⁵

Contribution from direct selling companies is targeted at social causes such as health and human services, environmental protection, women empowerment and children protection and education rights. Kerala has also benefitted from such CSR initiatives by the direct selling companies.

Child education through CSR: Amway

Amway Opportunity Foundation (AOF) has been working to enable under privileged children with a special focus on the blind. Under its national project for the blind, AOF has set up vocational computer centres at Thiruvananthapuram which provide specialised computer literacy oriented training to the visually challenged. In addition to vocational training in IT, the centre provides personality development and various soft skill modules to the students. The AOF foundation has distributed 1000 Braille kits for

blind children throughout Kerala. It had partnered with Rajiv Gandhi Foundation (RGF) to set up 10 village libraries in Wynaad district. These libraries will be provided with books, furniture and newspapers. The foundation also imparted trainings to the village librarians and supervisors so as to effectively manage the library systems. The aim was to make these libraries self sustainable after the initial support from the foundation.

Spreading awareness on nutrition: AMC India

As a part of its CSR Activity, AMC India regularly organises AMC Nutrition talks. These are free informative talks conducted by the Branch Nutritionist in different areas for the duration of 45 Minutes. AMC nutrition talks educate the participants on various aspects of nutrition and healthy eating habits. It imparts information and eye opening facts on balanced diet, conservation of nutrients, energy content of nutrients, ideal weights etc. These free talks are organised at various Health clubs, Rotary clubs, Ladies clubs, schools, colleges and residential societies. The AMC nutrition talks are followed by health checkups.

AMC India also distributes free of cost AMC nutrition guide during AMC parties as a part of its CSR activity. AMC nutrition guide has basic information and facts about nutrition, healthy eating habits, and nutrition requirements for various age groups. The AMC nutrition guide helps in creating awareness on healthy living amongst its readers. These CSR Activities have resulted in creating awareness and better understanding of nutrition and healthy eating habits amongst the participants.

Avon Breast Cancer Crusade: Avon India

In 2008, Avon India launched the Avon Breast Cancer Crusade in association with Avon Foundation followed by the 'Don't turn a blind eye to breast cancer' campaign in 2009. Through various mediums, breast cancer awareness was disseminated to over 1 million

women. Through the sale of pink ribbon products, Avon India raised more than USD80,000 from 2008 to 2010, and the funds have been donated to the Cancer Patients Aid Association.

Source: Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

5. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Direct selling opportunities in Kerala: 2025



Driven by the potential for increasing penetration, growth in consumer markets, rise in disposable income and increasing urbanisation, the industry in Kerala has immense growth potential.

The direct selling industry has huge potential to increase its penetration in India, which can significantly drive the size of the industry.

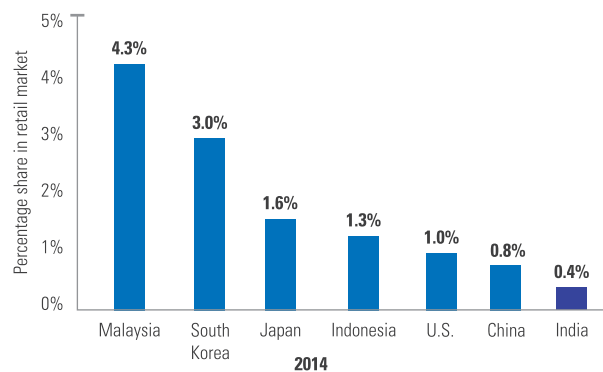
Market penetration: Overview of the global market

In China, the direct selling industry has flourished from 2006 onwards and has grown significantly over the past years. Currently, China's industry penetration stands at twice that of India at 0.8 per cent.

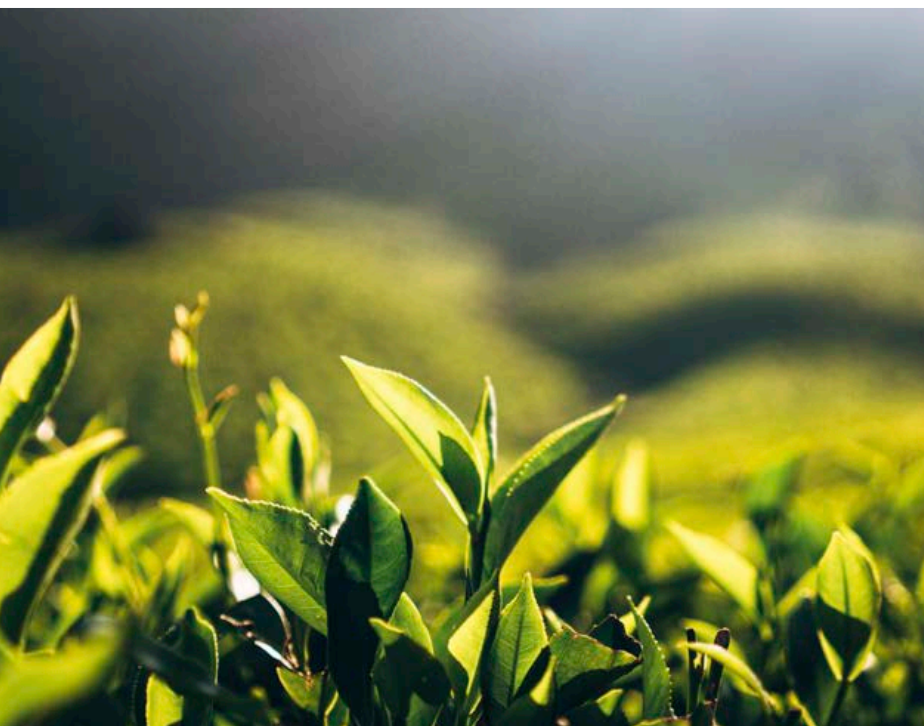
Other Asian markets such as Indonesia, Japan and South Korea have much higher direct selling penetration levels. Malaysia has the maximum direct selling penetration in Asia with 4.3 per cent.

India's direct selling penetration is the lowest among comparable economies at 0.4 per cent of the retail sales which further reduces at the state

level. Given its under-penetration, the industry in Kerala has a significant potential to grow going forward.



Source: Euromonitor database, <http://www.euromonitor.com/>, 26 August 2015

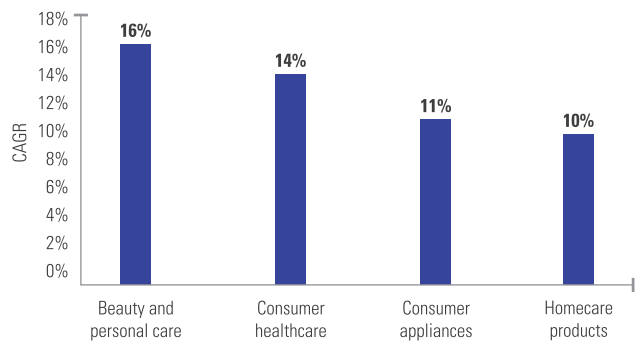


Growth in consumer markets

The overall industry growth in all the key categories of direct selling such as health and wellness, cosmetics and personal care, household goods, and others will fuel direct selling growth.

Most of these categories, which are key contributors to the direct selling industry, are projected to grow at 10-16 per cent.

Projected market growth rate (2014-2025)



Source: Euromonitor database, <http://www.euromonitor.com/>, 26 August 2015, BCG Report 'The Tiger Roars, Capturing India's Explosive Growth in Consumer Spending', 2012, KPMG in India analysis 2014-15

Market potential in Kerala (INR billion)



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, FICCI direct selling taskforce and KPMG in India analysis 2014-15



Growth drivers/key trends

Increasing per capita income

The robust GDP growth in the state has given a boost to the GDP per capita in the state. The state has registered a CAGR of around 13.5 per cent in the past decade and is likely to witness strong growth in the future. The resulting rise in disposable income levels is expected to boost the direct selling industry in the state.

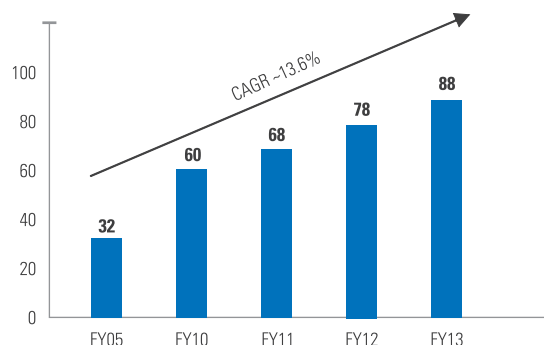
Increasing working population and urbanisation

- In 2011, about 48 per cent of Kerala's population resided in urban areas, a number that is expected to see an increase in the coming years.
- Urbanisation is likely to have a positive impact on lifestyle of people as they will have more exposure to better quality products and services.
- Also along with rapid urbanisation, by 2025 a higher share of the population is expected to shift towards the workable age group. Convenience and improvement of lifestyles should trigger a demand for direct selling products specially packaged food, cosmetics and household appliances.

Increasing reach of the direct selling industry

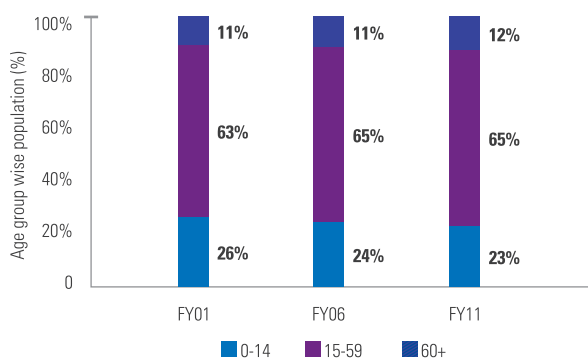
The direct selling industry is expanding its reach across states. The companies are trying to enter tier II and III cities and rural areas, providing consumers with knowledge about different products and services. The companies have adopted measures such as foregoing their premium tags and introducing smaller Stock Keeping Units (SKUs) to make the products affordable.

Per capita income in Kerala (INR'000)



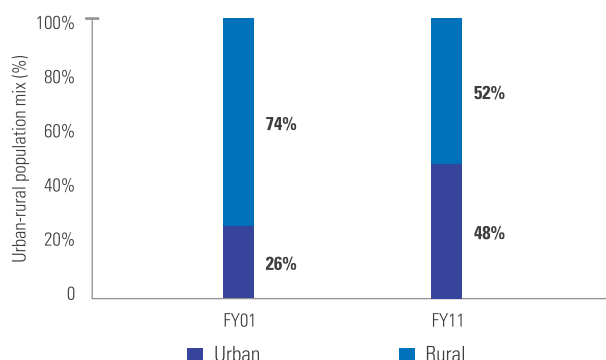
Source: Economic Survey of India 2014-15 (Gol), 26 September 2015

Increasing working population



Source: Population projections for India and states 2001-2021 (Census)- 7 September 2015

Urbanisation



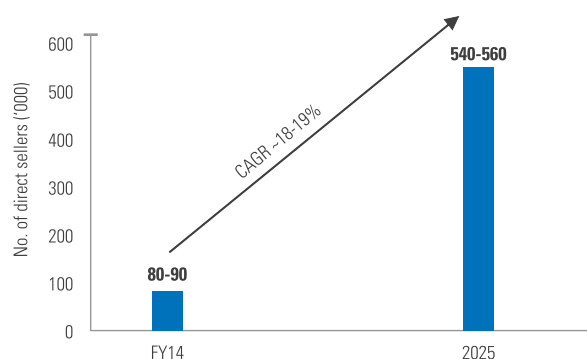
Source: Census data, Population projections for India and states 2001-2021 - 7 September 2015

Opportunities and socio-economic projections in Kerala: 2025

Self employment opportunities

The growth of the direct selling industry is likely to lead to an increase in on-ground direct sellers. The direct selling industry has the potential to provide self employment opportunities to 540,000 -560,000 individuals while growing at a CAGR of 18-19 per cent by 2025.

Direct selling employment opportunity

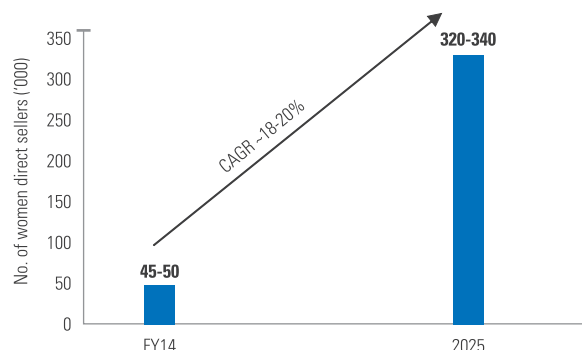


Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI Direct Selling Task Force and KPMG in India analysis 2014-15

Increase in self-employment opportunities for women

The industry has traditionally had a higher participation from women. Considering prevailing trends, by 2025, the industry can potentially engage over 320,000-340,000 women as direct sellers providing additional income opportunities to their households.

Self-employment opportunities for women



Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI Direct Selling Task Force and KPMG in India analysis 2014-15



The industry has the potential to contribute INR1.9-2.0 billion to the exchequer in the form of taxes by 2025.

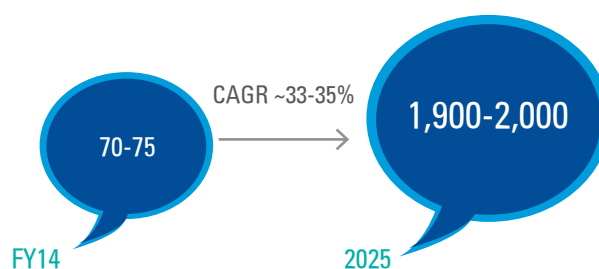
The industry's projected contribution to corporate social responsibility: 2025

- In August 2013, the Indian Parliament passed the Indian Companies Act, 2013 (the 'New Act'), which replaced the Companies Act of 1956. The New Act has imposed compulsory Corporate Social Responsibility obligations (CSR) upon Indian companies and foreign companies operating in India. Companies with a turnover of INR10 billion or net profit of INR50 million or more have to spend 2 per cent of their net profit for the preceding three years on CSR. With the New Act in place, the direct selling industry's contribution towards CSR is expected to magnify significantly.
- The industry is expected to contribute huge sums of funds towards CSR activities by 2025 annually (considering that 50 per cent of the revenues will be generated by companies falling under the requirements of the Act). Besides the mandatory requirement, many other direct selling companies contribute significantly towards CSR.

Contribution to government revenue

Considering the market potential and future growth of the industry to INR18-20 billion in 2025, the contribution to the government revenue in the form of indirect taxes is also expected to increase to ~INR1,900-2,000 million by 2025.

Contribution to exchequer (INR million)

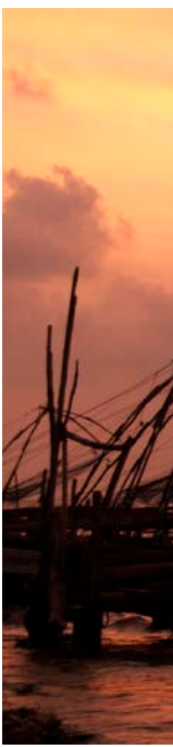


Source: IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, Industry discussions, FICCI Direct Selling Task Force and KPMG in India analysis 2014-15

Note: Impact of GST has not been considered for the opportunity assessment of the industry and its contribution to the exchequer.



Overview of current regulations in Kerala



The Kerala State Multi-Level Marketing (Control and Regulation) Bill, 2013 ('Draft Kerala MLM Bill, 2013')¹

In the wake of the various legal actions being initiated against the fraudulent activities relating to money chain schemes operating in the name of direct marketing, the Kerala State Government constituted a Committee with the twin objective of (i) preparing effective guidelines to prevent fraudulent activities relating to money chains schemes; and (ii) safeguarding the interests of the consumers as well as law-abiding direct selling companies in the state.

The Committee was headed by the Secretary (Industries) and comprised of the representatives of the Law Department, Home Ministry, Commercial Taxes Department and the Consumer Affairs Department.

Key statutes and information referred to by the Committee

- Prize Chits and Money Circulation Schemes (Banning) Act, 1978 ('PCMCS')
- Consumer Protection Act, 1986
- Sale of Goods Act, 1930
- Indian Contract Act, 1872
- Kerala Value Added Tax Act, 2003
- Securities Exchange and Board of India Act, 1992
- Judicial precedents in the context of the PCMCS Act
- Representations of the direct selling companies
- The Essential Commodities Act, 1955
- Legal Metrology (Packed Commodities) Rules, 2011
- Legal Metrology Act, 2009
- Corporate law

Key observations of the Committee

A need for a clear definition of direct selling

Requirement of a Multi-level Marketing Regulatory Authority

A need for clear provisions for the protection of consumer interests

Constitution of a welfare fund for the benefit of distributors

The primary intention of the Committee was to frame detailed guidelines regulating direct selling or multi-level marketing activities, particularly to help ensure that such business activities are conducted without violating the provisions of the PCMCS Act. An overview of the guidelines and provisions laid down by this Committee has been captured in the next section.



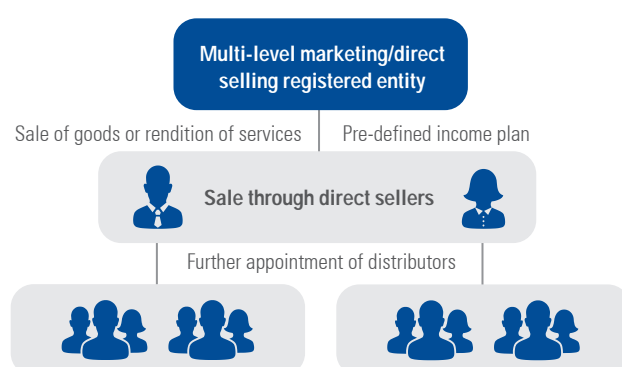
1. The Kerala State Multi- Level Marketing (Control and Regulation) Bill, 2013

The Kerala State Multi-Level Marketing (Control and Regulation) Bill, 2013

Key definitions

Key elements of the direct selling business have been defined under the Draft Kerala MLM Bill, 2013:

Ecosystem of a direct selling business



| Terms | Definitions |
|---|---|
| Direct seller | A person appointed or authorised by a multi-level marketing entity to engage in direct selling. |
| Distributor | A person appointed or authorised by a direct seller to work under him/her for the sale of goods and providing services of a multi-level marketing entity as entrusted to him/her for direct selling. |
| Goods | Every kind of movable property with a trade mark or any other identification mark under the Trade Marks Act, 1999 (Central Act 47 of 1999) or under any other law in force at the time. |
| Services | Includes services of any description and providing benefits of any kind, other than the supply of goods, valid as per any law in force at the time. |
| Income plan | The sales and marketing plan of a multi-level marketing entity, illustrating the mode of sharing of profits and other incentives, including financial and non-financial benefits, among the direct sellers and distributors, on a monthly or yearly basis or both, as the case may be. |
| Multi-level marketing or direct selling | Marketing and sale of goods or providing services of a multi-level marketing entity through direct sellers or through direct sellers and distributors, in any manner other than through shops, to the customers or consumers, generally in their houses or at their workplaces or through the explanation and demonstration of such goods and services at a particular place or by mail order sale. |
| Multi-level marketing entity | A company registered under the Companies Act, 1956 (Central Act 1 of 1956) or Companies Act, 2013 (Central Act of 2013) or any partnership firm registered under the Partnership Act, 1932 (Central Act, 1932) or under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009) engaged in multi-level marketing. |

Source: The Kerala State Multi-Level Marketing (Control and Regulation) Bill, 2013

Constitution of a Multi-level Marketing Regulatory Authority

- The Committee report recommended that the Kerala State Government constitute a Multi-level Marketing Regulatory Authority ('MLM Authority'), controlled by Director of Industries and Commerce, for the purposes of registration, control and supervision of multi-level marketing in the State.
- The salient powers and functions of the MLM Authority are listed below:
 - Implement the provisions of this Act and the rules made thereunder.
 - Give or refuse registration to multi-level marketing entities, direct sellers and distributors under them.
 - Issue identity cards to the direct sellers and distributors.
 - Control and supervise the conduct of multi-level marketing.
 - Receive returns relating to the business conducted by the multi-level marketing entities and the direct sellers and distributors under them.
 - Monitor the taxes being paid by the multi-level marketing entities to the Commercial Taxes Department.
 - Call for and inspect the records relating to direct marketing from the multi-level marketing entities, direct sellers and distributors.
 - Receive complaints from direct sellers, distributors, customers and consumers against the multi-level marketing entities.
 - Provide for settlement of disputes among them or to give legal advice for taking appropriate legal actions in accordance with the law in force at that time so as to remedy their grievances.

- Ensure that the consumers are not being cheated by multi-level marketing entities or direct sellers and distributors under them.

Registration of a multi-level marketing entities

- Every multi-level marketing entity must carry out its business only after obtaining a prior registration under the Draft Kerala MLM Bill, 2013.
- Multi-level marketing entities may be permitted to appoint or authorise any number of 'direct sellers' under them and also to appoint any number of 'distributors' by the direct sellers with the permission of such entities but the names of all such direct sellers need to be registered with the MLM Authority.
- An application for registration should contain the following documents and information namely:
 - An authenticated copy of each of the Memorandum of Association ('MOA'), Articles of Association ('AOA'), Certificate of Registration of the Company.
 - A copy of the latest balance sheet of the entity applying for registration, profit and loss accounts and reports of the auditor or directors of the applicant, if any.
 - Evidence of receipt of total paid-up share capital.
 - The applicant's multi-level marketing scheme, including its income plan with respect to the business.
 - Receipt of payment of the registration fee, which shall be paid in such a manner as may be prescribed.
 - Address and other details of the directors and partners, as the case may be, and the number

of employees, of the multi-level marketing entity of the State at the time of application for registration.

- Such other information and documents, as may be prescribed.
- The application shall be made in such a form and in such manner as may be prescribed.
- A security deposit, being a fixed amount proportionate to the total turn over of the multi-level marketing entity at the time of application for its registration but not exceeding 3 per cent of this total turn over, shall be deposited by the multi-level marketing entity where the registration has been granted. In case the multi-level marketing entity comes into being after the date of the commencement of this Act, the security deposit may be fixed based on its paid-up share capital. A certificate of registration shall be immediately issued after depositing the security amount.
- Any modification or alteration of the nature of the business or change in the management of the multi-level marketing entity after its registration must be brought to the notice of the MLM Authority. A true copy of all the documents in relation to such a modification or change shall also be furnished to the MLM Authority.
- The registration certificate will be valid for a period of three years from the date of issue of the certificate. The certificate needs to be renewed within one month of its expiry.

Registration of direct sellers

- Every direct seller of a multi-level marketing entity shall register his/hers or name with the MLM Authority and get enrolled in the direct sellers' registry maintained by the MLM Authority and obtain a certificate of the enrolment in the manner and in such form as may be prescribed.
- No person or other entity, other than a distributor, shall engage in direct selling on behalf of the multi-level marketing entity unless the distributor or entity has enrolled as a direct seller under the Draft Kerala MLM Bill, 2013.
- An application for enrolment as a direct seller shall, if the business is intended to be carried out in more than one District, be made to the Controller and if it is for one District alone, to the Additional Controller of the District concerned, with such fees and in such form as may be prescribed.
- The application shall contain the registration number and other details of the multi-level marketing entity, true copy of the marketing contract with that entity and such other details and documents as may be prescribed.
- Upon enrolment, the direct seller shall be issued a photo identity card in the prescribed form.
- No person or other entity shall be eligible to get registered, or continue as a direct seller if he/she is:
 - a. Convicted of an offence involving moral turpitude;
 - b. Declared as an insolvent as per the provisions of any law in force at the time;
 - c. Not mentally fit to deal with the customers or consumers;
 - d. Not permitted by any other law applicable to him/her;
 - e. Having such disqualifications, or not having such other qualifications, as may be prescribed.

Registration of distributors

- No distributor shall engage in the business on behalf of a direct seller without an enrolment under the Draft Kerala MLM Bill, 2013 and he/she shall not act on behalf of any multi-level marketing entity.
- An application for enrollment shall be made to the concerned Additional Controller of the MLM Authority with such fee and in such form and in such a manner as may be prescribed.
- A person shall not be entitled to get enrolled as a distributor for the same reasons as specified for a direct seller.
- Upon enrolment, the distributor shall be issued a photo identity card stating the enrolment number and such other details in such form as may be prescribed.

Conditions for undertaking direct selling

Specific conditions have been prescribed for a multi-level marketing entity for undertaking direct selling or multi-level marketing activities which inter-alia includes:

- A multi-level marketing entity must be a legal entity authorised to conduct business in India in accordance with the provisions of the law in force.
- It must have a registered trademark which identifies the entity and the goods or services to be supplied.
- It must maintain appropriate records with respect to their goods, services, prices, income plans and details of direct sellers etc.
- It must not require the direct seller or distributor to purchase any goods or services or to pay any membership fee as a condition precedent for registration or enrolment of direct sellers or distributors.
- It must not require the direct sellers or distributors to pay any money by way of minimum monthly subscriptions or renewal charges.

- It must ensure the full refund of the costs of any goods returned by its consumers on the grounds of any defects or inferior, in comparison to the information about the goods provided by it, within 30 days of purchase.
- The income plan of the entity must not be based on the number of new direct sellers registered or distributors enrolled. The benefits received must be as a result of selling goods or providing services and must not be in connection with the number of registrations of direct sellers or enrolment of distributors.
- It must not require the direct sellers to enroll a minimum number of distributors for the purposes of receiving any type of commission, incentive or other benefits.

Disclosures to be made by the direct sellers and/or distributors

The direct sellers and distributors must provide the following information to the consumer at the time of the sale, namely:

1. The name, address, registered number or enrolment number and telephone number of the direct seller or distributor and the multi-level marketing entity.
2. A description of the goods or services to be supplied.
3. The order date, the total amount to be paid by the consumer along with the bill and receipt;
4. The time and place for the inspection of the sample and delivery of goods.
5. A notice to the consumer of the consumer's rights to cancel the order and receive a full refund of the sum paid.
6. Details regarding the complaint redressal mechanism of the multi-level marketing entity.
7. The direct sellers and their distributors shall at all times carry an identity card issued by the authority.

The terms and conditions of a sale between a direct seller or distributor and the customer

- The direct seller or the distributor, as the case may be, must issue a signed receipt to the customer upon receiving payments with respect to the sale of goods or services as agreed by both the parties, in such form as may be prescribed, which must also contain grounds for cancellation of the transactions and such other terms and conditions with respect to the sale of goods or services concerned;
- A customer may rescind a direct sales contract with a direct seller or distributor at any time within 30 days from the date of such a direct sales contract, by serving the direct seller or distributor, as the case may be, a notice in such a form as may be prescribed.

Issuing cash bills to the customers and keeping registers

- Every direct seller and distributor who sells goods to a consumer shall issue a cash bill to such a consumer in accordance with the provisions of the applicable law in force at the time.

- Every direct seller and distributor shall keep such register or registers stating the details of the products, price, tax and the quantity and such other details with respect to the goods sold by him/her, in such form as may be prescribed;
- The authority and the officers concerned of the Commercial Taxes Department shall be competent to call for such registers for any purpose in accordance with the provisions of an applicable law in force at the time;
- Notwithstanding anything contained in this Act, every direct seller and distributor shall comply with the provisions of the Kerala VAT Act

Constitution of a welfare fund

- A provision for the constitution of a welfare fund for the benefit of the distributors has been incorporated in the MLM Bill. Accordingly, the provisions of the Kerala Shop and Commercial Establishment Worker's Welfare Fund ('Kerala Welfare Fund') Act, 2006 will be applicable to every multi-level marketing entity, direct seller and distributor in the state. Every multi-level marketing entity and direct seller in Kerala shall be an

'employer' and every distributor shall be a 'worker'.²

- Any distributor may become a member of the Kerala Welfare Fund constituted under the said Act and thereupon he/she will be eligible for all the benefits under the Kerala Welfare Fund Scheme on payment of the applicable contribution.
- Every multi-level marketing entity and direct seller in Kerala shall be liable to contribute to the fund.
- No distributor can become a member of the said fund if he/she is a member of any other statutory welfare fund.
- The membership of the distributor in the said fund shall cease when he/she ceases to be a distributor.
- The relationship between the direct-level marketing entity, direct seller, distributor and consumer or customer shall be that of a principal, agent, sub-agent and third parties, respectively.

Amendment in Kerala Value Added Tax Act, 2003 ('Kerala VAT Act, 2003')

- The Kerala Budget for the Financial Year 2015-16 brought about a major amendment in the Kerala VAT Act, 2003 specifically in the context of companies undertaking sales via the multi-level marketing model.
- The terms 'multi-level marketing' and 'multi-level marketing entity' have been defined in this Act on similar lines as their definitions in the Draft Kerala MLM Bill, 2013
- By implication of the said amendment, all incorporated multi-level marketing companies, their distributors and agents have been made liable to obtain registration under the Kerala VAT Act and discharge VAT, irrespective of their turnover.

Stringent compliance provisions - As per the Kerala VAT Act 2003, every direct seller or distributor in the MLM Chain has to obtain VAT registration and discharge VAT even if he/she successfully concludes just a single sale during the entire year.

2. The Kerala State Multi- Level Marketing (Control and Regulation) Bill, 2013

Challenges faced by the industry





The direct selling industry, similar to the larger consumer industries faces counterfeit issues and general difficulty with regards to doing business in India. However, our interactions with the industry participants suggest that one of the biggest challenges that the industry faces today is that of regulatory uncertainty and lack of legislative support in recognition of the rightful industry.

The Indian direct selling industry is well poised to occupy an important position in the international and domestic markets. However, there are many issues and challenges which remain bottlenecks for the growth of the Indian direct selling industry.

Specific challenges

Regulatory uncertainty

The industry in Kerala is adversely affected by the lack of a proper legal framework which is hampering its growth. There is no systematic and standard policy on direct selling that is based on the constitutional structure. As a result, authorities have booked direct selling companies for unlawful activities under the Prize, Chits and Money Circulation Schemes Act (PCMCS Act). The Act, which was enacted much before the advent of direct selling in India, is archaic and does not distinguish rightful direct selling businesses from malicious money circulation schemes. Under the PCMCS Act customer complaints are acted upon as though they are criminal offenses. This means investigating officers have the power to arrest key individuals and seize company assets. This paints a negative picture of the

industry and causes participants and potential customers to be wary, which prevents them from realising the benefits of direct selling.

Apart from the ambiguity in the PCMCS Act, there are many other regulatory issues including a lack of definition and separate provisions for the industry, which adversely affects the industry.

The regulatory challenge for the industry along with a potential solution has been discussed in detail in the next section.

Other challenges

Counterfeit products

Direct selling products should not be sold through retail stores. However, it has been seen that, many retailers become direct sellers and start off by selling the products to customers through retail outlets. This leakage of products through traditional retail channels is contradictory to the very nature of direct selling and needs to be adequately addressed. This channel also encourages the sale of counterfeit products which affects the brand.

Difficulty to set up manufacturing facilities

Most larger direct selling companies in Kerala are renowned MNCs. However, due to rigid labour laws and poor infrastructure, many of these have found it difficult to set up their own manufacturing facilities in the state. All states have different regulations and there is no centralised federal system, making the process of getting clearances costly and time consuming.

High import duties

Many ingredients for the industry's products are imported. Higher import duties add to the prices of the products and as a result makes them more expensive for the final consumer adversely affecting the demand for such products as they are available at lower prices in international markets.



[The regulatory challenge, and the way forward]



Current regulatory environment in Kerala

The biggest challenge that the industry faces today is that of regulatory uncertainty, both at the Central and the State level, and lack of legislative support in recognition of the rightful industry.

In Kerala, though there is a draft Bill outlining the specific regulations/ guidelines governing the direct selling activities, however, the same has not been converted into a legal statute till now.

Moreover, in certain states direct selling companies have been allegedly tagged along with fraudulent schemes under the Prize and Chits Money Circulation (Banning) Act, 1978 ('PCMCS') by the law enforcement

authorities of the such state(s). The state judiciary and regulators have alleged that some of the companies engaged in direct selling conduct 'money laundering activities' by promoting or conducting a scheme for making quick and easy money. In the wake of these allegations, there have been instances of top managerial person of a direct selling company being remanded to custody. Local authorities have stalled the operations of these direct selling companies and caused irreparable damage to their reputations. This regulatory challenge has lead to business uncertainty in India, with the added risk of harassment and business disruption.¹

The Prize and Chits Money Circulation (Banning) Act, 1978¹

The PCMCS Act was legislated in 1978 to regulate and ban fraudulent Pyramid and Ponzi schemes prevailing in the country which primarily benefit the promoters and do not serve any social purpose. The Section 2(c) of the PCMCS Act, which provides an inclusive definition of 'money laundering schemes', emits a clear

mandate of this stringent law, that prize chits, money circulation schemes, by whatever name they may be called are to be banned.

It is imperative to note that PCMCS Act is an archaic legislation which was enacted around 40 years ago when the Indian markets had not even experienced any penetration by direct selling companies.

Having said the above, though the provisions of the PCMCS Act do not explicitly exclude or deal with businesses which involve genuine sale of products or services via the direct selling mode. The primary intent of this statute is to interdict schemes having no public value and designed to lure a chain of innocent investors to loose their money.

However, during last few years, some Indian government authorities have, on a mistaken understanding of direct selling model, taken the view that models of direct selling companies are akin to pyramid-based financial and money circulation schemes banned under the PCMCS Act.

Applying the principles of legal interpretation and construction, read with the pragmatic legislative intent behind the enforcement of this statute, conflation of genuine direct selling companies with pyramid and Ponzi schemes is a clear case of confused identity. (Detailed analysis of the real legislative intent of the PCMCS Act, 1978 is enclosed as Annexure 1).

Therefore, the differences in interpretation regarding the applicability of the PCMCS Act have created formidable hardship for genuine players operating in this industry. The law enforcement authorities have also been oblivious of the fact that genuine direct selling companies have been investing significant amount in manufacturing and research and development costs, deal in high quality products- usually globally accepted brands, provide after sales services, redress distributor/ consumer grievances on a timely basis. In addition to significant capital



1. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

investment, the distributors engaged in selling of their products are paid commission based on quantum of sales and while the unsold inventory is bought back in case of no eventual sales.

It is in this backdrop that the need to confer regulatory clarity and certainty direct selling companies with legitimate businesses, arises so as to ensure that they are not conflated with fraudulent pyramid and Ponzi schemes.

Multiplicity of regulations²

The direct selling sector in India has a quasi-federal governance structure. The Constitution of India has demarcated the areas of jurisdiction areas of jurisdiction for the Central Government (Union List), State Governments (State List) and joint administration between Central and State Governments (concurrent list).

According to Indian constitution, wholesale and retail trade fall under the purview of state governments. Since direct selling, as defined in NIC 2008 classification, is a part of non-store retail format, it falls under state legislation. However, this sector is also closely monitored by different ministries/departments of the central government.

As on today, multiple statutes relating to consumer protection, product labelling, food safety and standards, administrative laws both at the Central and State level regulate the direct selling sector in India in a piecemeal fashion. This complex maze of multitude of regulations is further complicated by the misapplication of PCMCS Act.

Therefore, one of the major challenges faced by direct selling companies in India is that they have to abide by and ensure compliance with over 30 odd regulations with no nodal government department so far. This involves significant time, effort and cost, thereby adding to the difficulties faced by this promising sector in India.

Definitional issues²

The lack of definitional clarity is another major issue impacting the growth of direct selling industry.

Contending that the absence of a precise definition of direct selling is a primary reason for confusion, experts have often drawn inferences from three different perspectives - (1) Legislative; (2) Operational; and (3) Statistical:

Legislative definition

Amendments in Kerala Value Added Tax Act, 2003 ('Kerala VAT Act, 2003)

- The Kerala Budget for Financial Year 2015-16 brought about a major amendment in the Kerala VAT Act, 2003 specifically in the context of companies undertaking sales via the multi-level marketing model.
- The terms 'multi-level marketing' and 'multi-level marketing entity' have been defined similarly as defined in the Draft Kerala MLM Bill, 2013. This is the only legislative definition of MLM activities in India.
- By implication of the said amendment, all incorporated multilevel marketing companies, their distributors and agents have been made liable to obtain registration under the Kerala VAT Act and discharge VAT, irrespective of their turnover.

Operational definitions by various associations

The second category of definitions includes definitions provided by the associations such as Indian Direct Selling Association, World Federation of Direct Selling Associations etc. (as already discussed earlier) are also not sufficient to define the scope of direct selling industry in India. These definitions do not tantamount to law and policy.

Statistical definitions

- Among the statistical definitions, one may refer to the classification of products provided under the United Nations Central Product Classification (UNCPC) - and National Industrial Classification (NIC).

- UNCPC and NIC are the standard classification systems followed for classifying various economic activities. Such classification systems ensure comparability of statistics from various systems, on different aspects of the economy, and usability of such data for economic analysis. In the current version 2 of UNCPC, the two digit code:
- 62 - stands for 'Retail trade services'; and the further classifications:
 - 621 and 622 - stands for retail trade services through specialised and non-specialised stores.
 - 623, 624 and 625 - is a residual category and can be interpreted as direct selling.
 - 623 is explained as, 'This group includes:- mail, catalogue or Internet sales services by stores that accept orders of new goods by mail, telephone, e-mail, etc., and ship or deliver products to the customer's door.'
 - 624 is explained as, 'This group includes:- retail trade sales through vending machines; retail trade services of market stalls- retail trade services of door-to-door sales or direct sales, defined as a method of consumer product and services distribution via sales in a person-to-person manner/ way from a fixed retail location primarily through independent salespeople and distributors who are compensated for their sales and for their marketing and promotional services, based on the actual use or consumption of such products or services.'
 - Finally, 625 is explained as, 'This group includes: retail services of commission agents who negotiate retail commercial transactions for a fee or a commission; services of electronic retail auctions.'

2. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

The Indian statistical counterpart is the 2008 version of the NIC. At the 2-digit level, NIC 2008 defines:

- Division 47 - covers retail trade, with the exception of motor vehicles and motor cycle
 - 471 through 478 are sales through stores, stalls and marts.
 - 479 – Retail trade not in stores, stalls or marts’.

One can sub-divide a bit further, but that is at best artificial.

- 4791 - Retail sales via mail order houses or via internet’ and explained as: ‘in retail sale activities in this class, the buyer makes his/her choice on the basis of advertisements, catalogues, information provided on a website, models or any other means of advertising. The customer places

his/her order by mail, phone or over the Internet (usually through special means provided by a website). The products purchased can be either directly downloaded from the Internet or physically delivered to the customer’.

- 47911 - Retail sales via mail order houses
- 47912 – Retail sales via e-commerce.
- 4799 - This leaves a residual category of other retail sales not through stores, stalls or marts.
- 4799 is interpreted as retail sale of any kind of product in any way that is not included in previous classes (by direct sales or door-to-door salespersons, through vending machines etc.), direct selling of fuel (heating oil, fire wood etc.), delivered directly to the customer’s

premises, activities of non-store auctions (retail) and retail sale by (non-store) commission agents. This class excludes delivery of products by stores.

- 47990 – Other retail sale not in stores, stalls or markets.

The direct selling industry is evolving with rapid technological development and many new non-store formats like e-tailing, catalogue selling, mail-order selling and telemarketing are developing. These are often linked to direct selling as it involves booking through phone calls and demonstrations through catalogues. In the wake of existing regulatory uncertainty hovering over this sector and ever-growing forms of non-store retail, it is imperative to arrive at a precise definition and classification of direct selling business.

Potential solutions

To provide a conducive and sustainable operating environment in India for the companies operating in direct selling industry, a series of reforms are required ranging from immediate short-term reforms in the nature of framing state level rules and/or standard operating procedure for law enforcement agencies to long-term

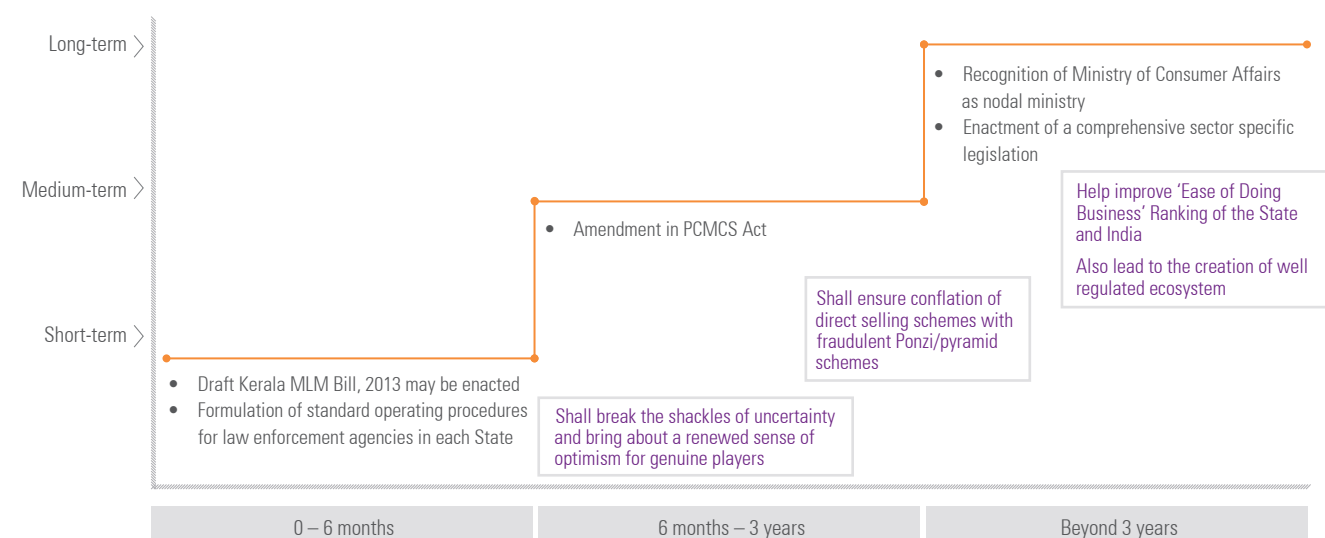
measures of enacting a specific governing legislation for the sector or making amendments in the existing Acts/policies.

A separate policy framework for the direct selling industry will clear the blurred lines between ethical industry players and impersonators and go a long way in regaining consumer

confidence. This change is imperative, especially when the industry is in double jeopardy at the moment – an erosion of faith and an identity crisis.

We have listed potential approaches below that can be considered by the State Government/regulators in the coming future to benefit this industry.

A snapshot: Potential solutions



Source: IDSA annual survey 2013-14 and 2009-10, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015, PHD Chamber, ICREAR, Direct Selling News, Industry Discussions, FICCI Direct Selling Task Force

Formulation of standard operating procedures for law enforcement agencies

While remedies in law are available in existing statutes, even today, they do not address the unique problems of the direct selling industry. The Indian law provides only for post-facto remedies wherein the customers can seek remedy only after they have been wronged or cheated by a fly by night operator. As a consequence, owing to lack of legal and administrative guidance, the law enforcement agencies of the State erroneously tag along the direct selling businesses with money circulation schemes banned as a criminal offence under the PCMCS Act.

In the above backdrop, in order to give direct selling industry a chance to substantiate genuines and prevent immediate criminal action on the receipt of complaint, State along with its law enforcement agencies may develop standard operating procedures to be followed in case when a complaint is filed against fraudulent MLM schemes. This ground level initiative shall help avoid undue harassment of genuine players of the industry and restore public confidence.

Specific standard operating procedures for law enforcement authorities can help ensure that timely and correct legal action is taken against fraudulent money circulation schemes and undue harassment to bonafide direct selling companies can be curtailed.

Implementation of state specific guidelines

- While the Central government evaluates the amendment of PCMCS Act or formulation of sector specific guidelines at the Central level, the provisions of the Draft Kerala MLM Bill, 2013 enumerated above, may be enacted.
- In line with the proposed statute, necessary amendments may be brought about in the Kerala VAT Act to reinstate the prescribed minimum turnover threshold prescribed for undertaking VAT registration by the direct sellers or the distributors as well.



Potential benefits

- Being viewed as investor friendly can help provide states with a competitive edge
- Improve the 'Ease of Doing Business' Ranking of the state
- Aid in the process of building Smart Cities
- Protect the interests of both the direct sellers as well as consumers.

Amending the PCMCS Act

- Over the years, many steps have been taken by the Centre and various state governments to formulate an enabling policy for direct selling companies in India. Various inter-ministerial committee(s) were formed under aegis of the Ministry of Consumer Affairs and Ministry of Finance to formulate sector-specific regulations which are still under review by various government bodies. The Finance Minister, in the Budget Speech of 2014, proposed to bridge the regulatory gap under PCMCS Act and bring about the long awaited legislative reform. However, no progress has been made in this regard so far.
- The PCMCS Act needs to be amended to make the distinction clear between direct selling and fraudulent pyramid money circulation schemes and exclude the direct selling industry from its scope. The said amendment should succinctly outline clear indicators of fraudulent schemes including:
 - **Payment for recruitment and/or redistribution of joining/periodic renewal fees**
 - » Payment for recruitment: When the scheme generates income based on recruiting alone, it is a pyramid scheme and thus, should be prohibited.
 - » Redistribution of joining or periodic renewal fees: When there are entry or renewal fees that are redistributed to other participants in the scheme, it is a pyramid scheme and thus, should be prohibited.
 - **Schemes where products are pushed on participants:** When participants, as a condition for joining or remaining in the scheme, are required to purchase a specified inventory of products which cannot, under normal circumstances, be resold or returned for a refund, a pyramid scheme may be presumed. Such a practice is often called 'inventory loading' and may also be used as a proxy for a joining or renewal fee that gets redistributed to other participants. Thus, such practices should be prohibited.
 - **Schemes where products are not refundable and returnable:** Where customers and distributors are not offered a commercially reasonable opportunity in compliance with the mandatory provisions of the local legislation to return products with which they are not satisfied, or which they are not able to sell, as the case maybe, a pyramid scheme is presumed.
 - **Schemes which restrict the commission paid to the distributor:** The proportion of commissions on the sale of product that may be shared with distributors should be restricted to a reasonable percentage of the total revenue from sales to distributors. In addition to these, the amendment of the Act could include the following:
 - **Approval authority given to the state governments:** It can be provided that only the schemes approved by respective state government would be considered as permissible activity.
 - **Mandatory 24x7 call centres** to address customer complaints.
 - **Compulsory accreditation of products** from government approved quality institutes (similar to how foods products or related products require accreditation under FSSA Act) or adherence to certain pre-determined quality standards in India.

Filling in the gaps in the present PCMCS Act can help the direct selling sector to break the shackles of uncertainty and bring about a renewed sense of optimism among the genuine players.

Need for a governing ministry and legislation

- The lacunae in the PCMCS Act necessitate that its diverse provisions are supplemented by legislation that specifically addresses direct selling.
- At present, direct selling falls under the purview of state legislation and is also governed by various Ministries/departments at the Centre, State and local levels. The multiplicity of regulatory bodies has resulted in multiple regulations and regulators governing this sector. These should be streamlined for the smooth performance and development of this promising sector.
- While it is important that an enabling definition of direct selling is developed, it cannot serve its full purpose unless it is accompanied with an appropriate legislative recognition and effective enforcement. Considering this, the government should nominate a specific ministry governing 'direct selling industry'. Such ministry should provide for specific regulations with a precise and a clear definition of 'direct selling activities' including legitimate MLM companies.
- The Consumer Protection laws also need some modifications in order to protect the interest of the consumers for products sold through direct selling.

For example, the laws do not clearly specify the cooling-off period for purchases through the direct selling mode. Apart from this, legal cases in India take time and there is a need to speed up consumer court proceedings.

- In this context, the Indian Government can leverage from the regulatory experiences and practices of other countries, viz. U.S.A., U.K., Malaysia, Singapore, etc. The industry, government and consumers suffer because of the activities of some of the fraudulent players. Therefore, the Central government can collaborate with industry associations and independent legal experts to design an appropriate regulation.
- 'Trade and commerce' being the state subject, from a consistency perspective, the power to define direct selling activities and demarcation of pyramid schemes from bonafide direct selling businesses may be provided at the Central Level. While, the state government should be provided complete autonomy to implement the provisions of such Central legislation by way of formulation of inter-alia specific consumer protection Rules/guidelines governing the activities of direct sellers in each state.

Single point clearance and a specific legislation can help bring about clarity in the business dealings of direct selling companies and save on cost, time and effort.



[Myths surrounding the industry]



Most direct selling companies are pyramid schemes that are doomed to fail

The differentiating factors between direct selling and pyramid or Ponzi schemes clearly indicate that with a view to make quick money, their promoters typically make participants deposit large sums of money to join, and financial rewards depend on further recruitment of members. Some Pyramid/Ponzi schemes may purport to sell products to camouflage the financial fraud but the products usually have little value and there is little or no selling.

On the other hand, genuine direct selling involves marketing of quality products at competitive prices with associated product warranties and guarantees. Also, the exponential addition of distributors to the network is earned only by accomplishing actual sales on a consistent basis.

Of course, it is necessary to watch

out for clear indicators of pyramid schemes, including high joining fees, emphasis on recruiting new members not selling, no buying back of products, etc., as elaborated upon earlier in the document.

The specific details such as IDSA code clause for 12 months, direct sellers kit provided, etc. need to be covered in detail. So this needs to be retained.

Majority of direct sellers lose money; a lot of the direct sellers drop out from the companies

- A large number of direct sellers say that direct selling meets or exceeds their expectations as a good way to supplement their income or as a way to make money for themselves¹.
- A large number of the direct sellers say that direct selling meets or exceeds their expectations as a business where the harder they work, the more money they can make.²

- In addition to providing income opportunities, direct selling also imparts transferable skills in sales and management, which can be used outside the direct selling industry, as well.
- The various direct selling associations' (IDSA, WFDSA, etc.) code of ethics, is designed to protect direct sellers and their customers. Inventory buybacks (which include sales aids) and other provisions allow sellers recourse if they wish to exit the industry.
- While the retail industry has attrition rates as high as 20 percent, the attrition rate for the direct selling industry is around 11 percent³. Many direct sellers do not drop out due to failure but do so as they may not want to sell any more for the year.



1. ICRIER survey report titled 'socio-economic impact of direct selling: Need for a policy stimulus' published in 2010, retrieved on 25 August 2015

2. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15, 22 September 2015

3. IDSA annual survey 2013-14, ETRetail.com retrieved on 25 August 2015.

Everyone who gets involved in direct selling wants an easy way to make money

People join direct selling firms with various intentions. As per ICRIER survey in 2011 (Report titled socio-economic impact of direct selling) 60 per cent of the respondents stated earning additional income as one of the key reasons for joining direct selling, 60 per cent of the surveyed people mentioned direct selling as a medium of becoming independent, while others take it up as it offers more flexibility or acts as a major source of income. In fact, direct selling offers significant employment opportunities to women in particular. About 64 per cent of women engaged in direct selling are self employed (full-time) direct sellers while only 36 per cent are part-time consultants⁴. Hence, there is a clear recognition of direct selling's potential to generate stable income in proportion to the efforts made.

The IDSA code of Ethics⁴ requires that information provided by direct selling companies to prospective or existing direct sellers should be accurate and complete. Companies are required to present the advantages of the selling opportunity to any prospective recruit in an accurate and realistic manner.

Most companies require inventory purchases; direct sellers who drop out are stuck with the inventory they purchased

Direct selling companies typically do not require or encourage direct sellers to purchase product inventory in unreasonably large amounts. The IDSA code governs that companies shall buy back any unsold, re-saleable product inventory, purchased within the previous 12 months in case the seller opts to quit.⁴

Recruitment is the key to success in direct selling; sales to end-users of the products and services are minimal

Recruitment is certainly an important aspect of direct selling. This helps in the expansion plans of the company thus leading to its growth. However, recruitment is not a requirement for the growth of a direct seller as the compensation is almost always based on actual sales of products or services. The direct selling industry in India was worth more than INR75 billion in 2014. Major firms such as Amway, Avon, Tupperware, Oriflame, etc. are all product companies⁵. The IDSA code specifies that companies shall take reasonable steps to ensure that direct sellers who are receiving

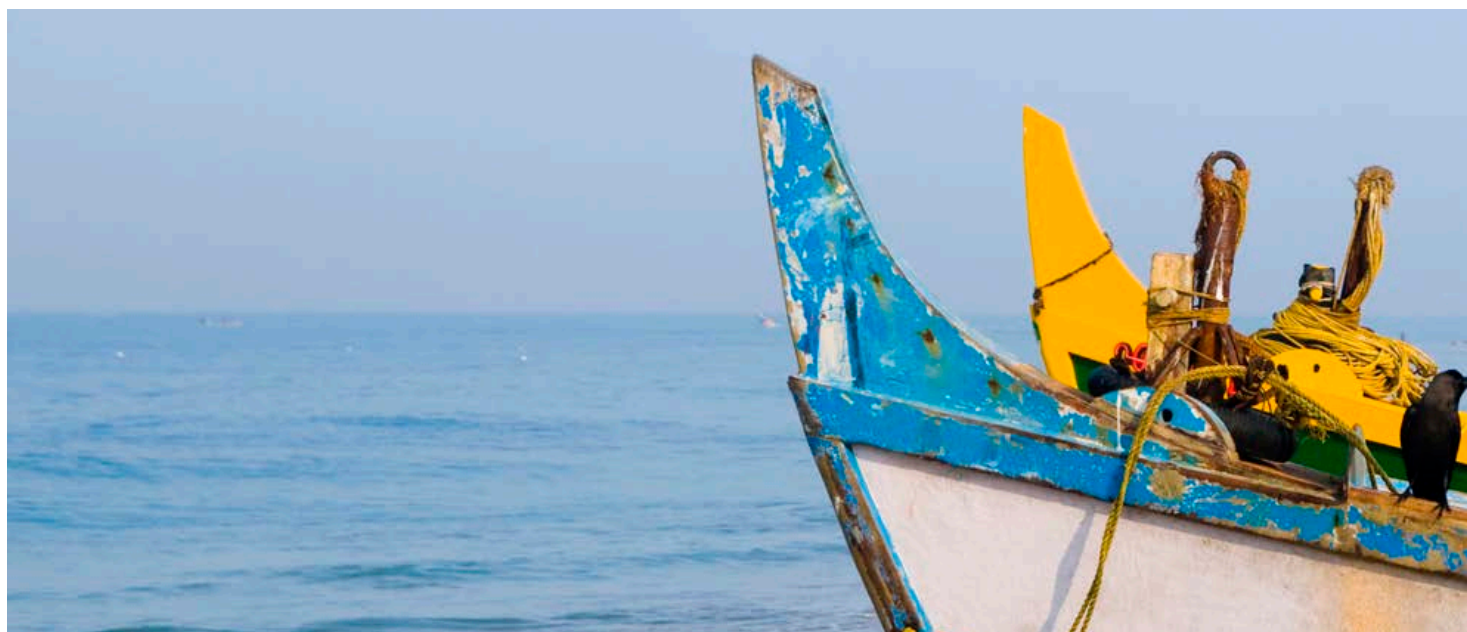
compensation for down line sales volume are either consuming or reselling the products they purchase in order to qualify to receive compensation.

Direct selling companies have a clear focus on new product development. As per PHD Search Bureau and IDSA surveys as part of the Indian direct selling industry, annual survey 2013-14, on an average, each direct selling company introduced around three new products/variants during 2013-14 in India, while the number was seven in 2012-13. The companies have also invested about 2 per cent of their annual revenues in R&D activities in 2013-14 which reflects the strong product focus of these firms.

In addition, direct selling companies invest significantly towards the development of direct sellers. Direct selling companies have offered training to their sales representatives in the range of 200 man hours per quarter to around 22,000 man hours per quarter in 2013-14⁴.

4. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015

5. IDSA annual survey 2013-14, Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15



If a person attends a direct selling event/party, he/she is expected to purchase a product that is typically overpriced

There is no obligation to purchase any product during any direct selling events/parties. These events are usually conducted only to demonstrate company products by the direct selling consultants. The key purpose is to enhance the customer buying experience while interacting with knowledgeable and friendly consultants. They offer elaborate insights into the products which are not available with other retail formats. The IDSA code also mentions that a direct seller shall discontinue a demonstration or sales presentation immediately upon the request of the customer and should not force him/her to make any purchase.^{6,7}

In this competitive age, the market is unlikely to be able to sustain overpriced products for longer periods of time. Almost all the direct selling

companies offer 100 per cent money back policy, in many cases even if the products are used. Direct selling has been found to be appealing to customers for its high quality of products and increased buying convenience.⁷ Some of the products could be in the premium segment but the value-added incentive of the demonstration and personal service increase their acceptance.

Direct selling is an outdated method of buying and selling

Direct selling is practiced in more than 170 countries globally. The direct selling industry in India has shown a growth rate of 16 per cent over the period of FY11-14. Globally, the direct selling industry grew at a CAGR of 8.5 per cent over 2010 to 2014.⁸

With rising income levels and

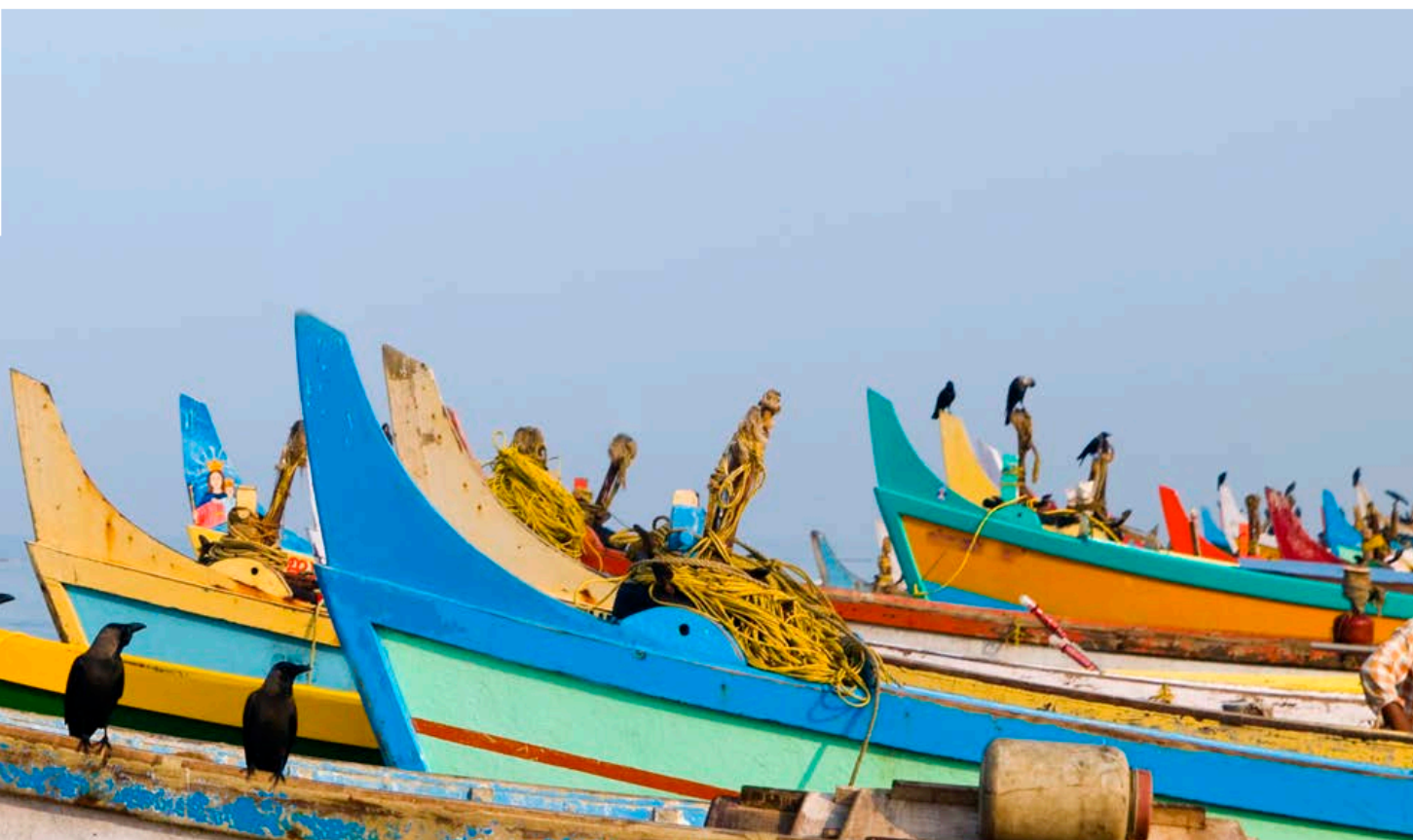
demand for convenience, formats like direct selling and e-commerce are catching on in the country. These channels remove multiple intermediaries, thereby offering effective and economical ways of selling products and services. Direct selling in particular, allows companies to significantly cut down advertising costs.

There are many examples where large companies have leveraged the direct selling model to increase customer outreach and sales in a cost-effective way. HUL's project 'Shakti', which increased the penetration of its products along with empowering women, or Eureka Forbes selling its high value products through direct selling are testimony to the relevance of the direct selling model in India.⁷

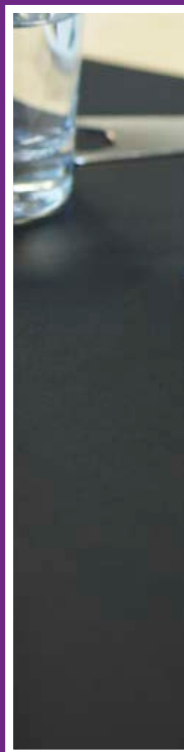
6. IDSA annual survey 2013-14, IDSA, <http://www.idsa.co.in/IndustryReports.html>, 22 September 2015

7. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

8. WFDFA annual report 2015, WFDFA, <http://www.wfdsa.org/library/index.cfm?fa=publications>, 22 September 2015



[Annexures]



Annexure 1

At this juncture, it is imperative to note the Supreme Court judgment in State of West Bengal and others versus Swapan Kumar Guha and others. The Hon'ble SC got an opportunity to excavate the true meaning of Section 2(c) of the PCMCS Act. Although facts leading this case were not from direct selling industry, the court encountered with the challenge of finding the real meaning behind of PCMCS Act and more particularly section 2(c).

The apex court felt that it is far too vague and arbitrary to prescribe that 'whosoever makes quick or easy money' is to be penalised under the statute. After due deliberation the court laid down the following:

'Two conditions must, therefore, be satisfied before a person can be held guilty of an offence under Sec. 4 read with Sections 3 and 2(c) of the Act. In the first place, it must be proved that he is promoting

or conducting a scheme for the making of quick or easy money and secondly, the change or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrolment of members into that scheme. The legislative draftsman could have thoughtfully foreseen and avoided all reasonable controversy over the meaning of the expression 'money circulation scheme' by shaping its definition in this form'.

After reading the SC judgment and James Raj Committee report, a logical conclusion may be drawn that the PCMCS Act, in its true spirit, does not apply to rightful direct selling companies, who develop MLM plans. The sole motive of the recruitment is to develop a larger sales force to sell more products to prospective customers.



Annexure 2

Definitional issues

Statistical definition

Among the statistical definitions, one may refer to the classification of products provided under the United Nations Central Product Classification ('UNCPCL') - and National Industrial Classification ('NIC').

In the current version 2 of UNCPCL, the two digit code:

- 62 - stands for 'Retail trade services'; the further classifications as under:
 - 621 and 622 - stand for retail trade services through specialised and non-specialised stores
 - 623, 624 and 625 - is a residual category and can be interpreted as direct selling
 - 623 is explained as, 'This group includes:- mail, catalogue or Internet sales services by stores that accept orders of new goods by mail, telephone, e-mail, etc., and ship or deliver products to the customer's door.'
 - 624 is explained as, 'This group includes:- retail trade sales through vending machines;- retail trade services of market stalls- retail trade services of door-to-door sales or direct sales, defined as a method of consumer product and services distribution via sales in a person-to-person manner/ way from a fixed retail location primarily through independent salespeople and distributors who are compensated for their sales and for their marketing and promotional services, based on the actual use or consumption of such products or services.'
 - Finally, 625 is explained as, 'This group includes:- retail services of commission agents who negotiate retail commercial

transactions for a fee or a commission; - services of electronic retail auctions.'

The Indian statistical counterpart is the 2008 version of the NIC. At the 2-digit level defines:

- Division 47 - covers retail trade, with the exception of motor vehicles and motor cycle
 - 471 through 478 are sales through stores, stalls and marts.
 - 479 – Retail trade not in stores, stalls or marts'.

One can sub-divide a bit further, but that is at best artificial.

- 4791 - Retail sale via mail order houses or via internet' and explained as, 'in retail sale activities in this class, the buyer makes his/her choice on the basis of advertisements, catalogues, information provided on a website, models or any other means of advertising. The customer places his/her order by mail, phone or over the Internet (usually through special means provided by a website). The products purchased can be either directly downloaded from the Internet or physically delivered to the customer'.
 - » 47911 - Retail sale via mail order houses
 - » 47912 – Retail sale via e-commerce
- 4799 - This leaves a residual category of other retail sales not through stores, stalls or marts
- 4799 is interpreted as retail sale of any kind of product in any way that is not included in previous classes (by direct sales or door-to-door salespersons, through vending machines etc.), direct selling of fuel (heating oil, fire wood etc.), delivered

directly to the customer's premises, activities of non-store auctions (retail) and retail sale by (non-store) commission agents. This class excludes delivery of products by stores.

- 47990 – Other retail sale not in stores, stalls or markets

Operational Definition by various associations

The second category of definitions includes definitions provided by the associations such as IDSA, WFDSA etc. (already discussed above) which are not sufficient to define the scope of direct selling industry in India. These definitions do not tantamount to law and policy.

Legislative Definition

No legislative definition exists in India. Given that India is one of the few countries where there is an FDI restriction in retail but there are other entry routes, whether direct selling is classified under wholesale or retail trade is unclear. The confusion also rises because direct selling has both B2B and B2C components.

In addition, the direct selling industry is evolving with rapid technological development and many new non-store formats like e-tailing, catalogue selling, mail-order selling and telemarketing are developing. These are often linked to direct selling as it involves booking order through phone calls and demonstrations through catalogues. This has increased the complexity of arriving at a precise definition and classification.

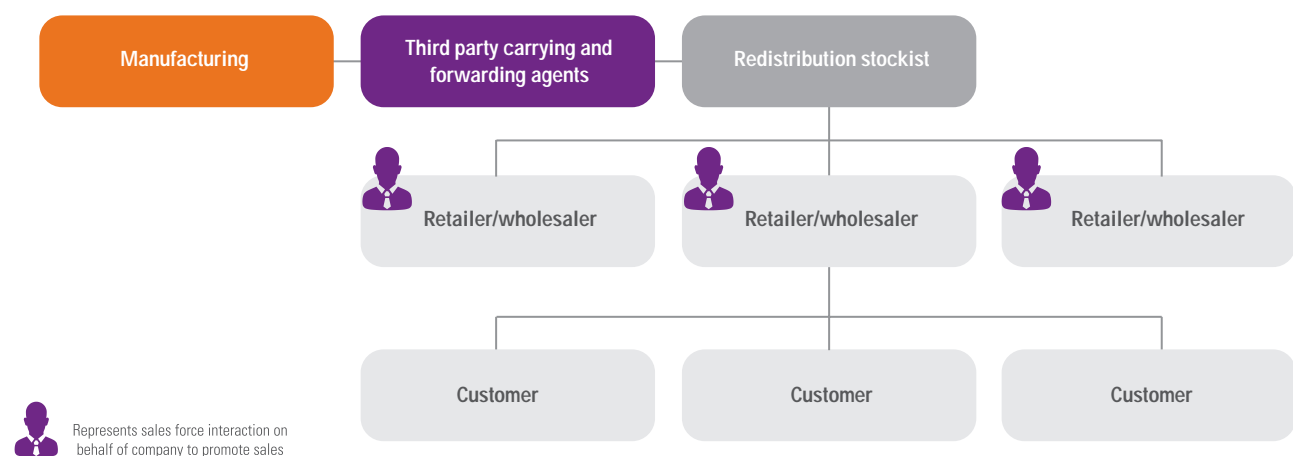
Annexure 3³

There are a lot of similarities between traditional consumer goods, retail and direct selling models:

- In both formats, distributors/direct sellers earn a commission when product sales takes place.
- Also, in both cases earning of the sales commission is based on the sales volume of the individual (and the group).

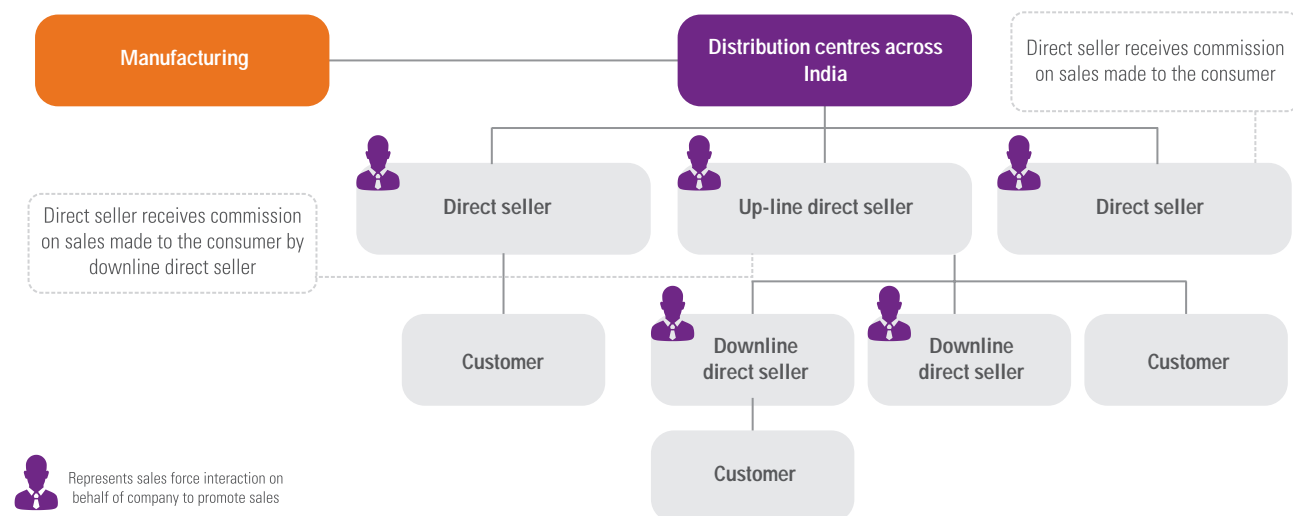
In the retail format, the CFA, redistribution stockist, and retail seller earn sales margins. In case of direct selling under an MLM plan, all different levels of direct sellers earn commissions on the sale of products.

Traditional consumer goods retail model



Source: Industry discussions, KPMG in India analysis 2014-15

Direct selling (multi-level marketing) model



Source: Industry discussions, KPMG in India analysis 2014-15

However, despite the similarities above, the traditional consumer goods retail and direct selling models, are essentially different formats with different investment requirements and sales philosophies.

3. Industry discussions, FICCI direct selling taskforce and KPMG in India analysis 2014-15

Annexure 4

Forecast methodology

Direct selling market size estimation

Methodology adopted

1

Identification of industries that significantly employ direct selling methods

Based on industries currently forming a major part in direct selling both in India and abroad. For example: beauty and personal care



2

Determine the current market size of the identified industries and the penetration of direct selling in each of the identified industries

Based on secondary sources and KPMG in India analysis



3

Project the market size of the identified industries in 2025

Based on secondary sources and KPMG in India analysis



4

Project the penetration of direct selling in 2025 in each of the identified industries

Comparison with other economies which have exhibited a similar evolution cycle for direct selling industry



5

Aggregate the industry-wise numbers to arrive at the total project market size for direct selling in 2025

Market size of
the identified
industry 1

X

Direct selling
penetration in
industry 1

+

+

Market size of
the identified
industry nth

X

Direct selling
penetration in
industry nth

=

Market
size of the
direct selling
industry

Direct sellers' estimation

Methodology adopted

1

Identification of country A whose current industry size is comparable to India's 2025 estimated market



2

Calculation of revenue per direct seller for the identified country A



3

Calculation of India's 2025 estimated market revenue equivalent in PPP terms for comparable estimation



4

Estimation of India's potential for generating self-employment using country A's equivalent

Direct selling market size and direct sellers' estimation for states

Methodology adopted

1

Projection of Indian middle-income households for 2025 using 2011 numbers



2

Distribution of the total Indian middle-income households by states based on estimated improvement in state welfare



3

Distribution of estimated direct selling market in 2025 by states using a proportion of middle income households as proxy for the direct selling potential for that state



4

Distribution of estimated direct sellers in 2025 by states using a proportion of direct selling potential for that state

About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialisation, and its emergence as one of the most rapidly growing global economies.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry. From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies.

FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

FICCI Direct Selling Task Force

The FICCI FMCG division has been relentlessly working on various issues which are critical for the industry. We have been actively involved in the policy and strategy, capacity building and global recognition for the Indian FMCG industry. We have formed a Task Force on direct selling industry which works on the similar issues with the Government.

Direct selling is a very obvious distribution channel for FMCG industry and has gained huge importance in the times when demand is further driven by convenience at their doorstep. Direct selling, as we understand is a sales and distribution channel/system whereby, on the basis of certain well defined rules direct sellers can derive income not only from personal sales but also from ongoing sales and consumption by people whom they, directly or indirectly, have introduced to the direct selling company and for whom they provide ongoing motivation and training.

We at direct selling sub-committee give expert insight to the issues pertaining to this labour intensive industry. We interact with various ministries – to name a few – Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Finance, etc. to bring legitimacy to direct selling sector. The subcommittee within itself has an advisory board of judgement neutral and intellectual people. In addition, the committee has coordinated the think tank which deliberates issues and concerns of the DS industry on regular basis. The committee has also undertaken several events and initiatives to clearly bring out distinction between scams and multi-level marketing.

About KPMG in India

KPMG in India, a professional services firm, is the Indian member firm of KPMG International and was established in September 1993. Our professionals leverage the global network of firms, providing detailed knowledge of local laws, regulations, markets and competition. KPMG in India provides services to over 4,500 international and national clients in India. KPMG has offices across India in Delhi, Chandigarh, Ahmedabad, Mumbai, Pune, Chennai, Bengaluru, Kochi, Hyderabad and Kolkata. The Indian firm has access to more than 8,000 Indian and expatriate professionals, many of whom are internationally trained. We strive to provide rapid, performance-based, industry-focussed and technology-enabled services, which reflect a shared knowledge of global and local industries and our experience of the Indian business environment.

KPMG's Disclaimer

KPMG in India has, to the best of its ability, taken care to accurately compile the information and material contained in this report. The report contains certain case studies, company profiles and country regulations which have been collected through primary interactions, media reports and company websites. We have indicated within our report the sources of the information presented. We have not sought to establish the reliability of these sources by reference to independent evidence.

In addition, the report contains certain prospective market projections. Such projections are based on secondary research and our analysis based on certain underlying assumptions. We must emphasise that the realisation of the projections is dependent on the continuing validity of the assumptions on which they are based. The assumptions will need to be reviewed and revised to reflect any such changes in the business structure and direction as they emerge.

KPMG does not warrant that the information and material contained in the research work, or any part thereof, is designed to, or will meet any person/organisation's requirements, or that it will be error free or free from any inadequacies, incorrectness, incompleteness, or inaccuracies. KPMG hereby disclaims any warranty, express or implied, including, without limitation, any warranty of non-infringement, merchantability or fitness for a particular purpose, in respect of any information and/or material contained in the research work. KPMG will not be held responsible for any loss, damage or inconvenience caused to any person as a result of any inadequacies, incorrectness, incompleteness, inaccuracies, or errors contained in these research reports. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

This paper shows a potential path the sector will follow in the run up to 2025; all our findings/forecasts are based on extensive research, analysis and discussions with industry players. However, they are subject to change due to the multiple unpredictable variables which could affect the industry.

The report shall be read in its entirety by those to whom it has been circulated for viewing, without removing any disclaimer. By reading this report, the reader/s of the report shall be deemed to have accepted the terms specified above.

Acknowledgements

This report could not have been written without valuable contributions from the following people.

Ms Shilpa Gupta and her team at FICCI and Members of FICCI Taskforce on direct selling, who have guided and facilitated the making of this report.

The KPMG team, who has contributed towards the content presented in this document, involved Rajat Wahi, Amarjeet Singh, Puneet Gupta, Suvasis Ghosh, Sushil Patra, Saurabh Karodi, Nitin Khanna and Sonam Chauhan. A special note of thanks to the Brand and Design team for their notable contribution in designing this report and bringing it to its present form.

KPMG in India contacts:

Nitin Atroley

Partner and Head

Sales and Markets

T: +91 124 307 4887

E: nitinatroley@kpmg.com

Ambarish Dasgupta

Partner and Head

Management Consulting

T: +91 33 4403 4095

E: ambarish@kpmg.com

Rajat Wahi

Partner and Head

Consumer Markets

T: +91 124 307 5052

E: rajatwahi@kpmg.com

KPMG.com/in

FICCI contact:

Shilpa Gupta

Head

Retail, FMCG, Gems and Jewellery Committee

FICCI Young Leaders' Forum

T: +91 11 2348 7270

E: shilpa.gupta@ficci.com

ficci.com

Follow us on:
kpmg.com/in/socialmedia



Download the KPMG India application:



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communications only.